Applicant Details

First Name	**Carlos**
Middle Initial	**A**
Last Name	**Arnoldo Torres**
Citizenship Status	**U. S. Citizen**
Email Address	**carlos.torresd98@gmail.com**
Address	**Address** Street **7901 West Business 83 Unit 15** City **Harlingen** State/Territory **Texas** Zip **78552** Country **United States**
Contact Phone Number	**9564064770**

Applicant Education

BA/BS From	**University of Texas-Austin**
Date of BA/BS	**June 2021**
JD/LLB From	**The University of Texas School of Law** **http://www.law.utexas.edu**
Date of JD/LLB	**May 4, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**American Journal of Criminal Law**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Sager, Lawrence
lawrencesager@gmail.com
5126986842
North, Victoria
Victoria.North@cpa.texas.gov
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Woolley, Patrick
pwoolley@law.utexas.edu
512-232-1323

References

Professor Lucas A. Powe, The University of Texas School of Law

spowe@law.utexas.edu; 512-232-1345

This applicant has certified that all data entered in this profile and any application documents are true and correct.

CARLOS TORRES
7901 West Business 83 Unit 15 | Harlingen, Texas | 956.406.4770
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June 26, 2023

The Honorable Judge Torteya
United States District Court
Southern District of Texas
600 E. Harrison St, Suite 203, Courtroom 1
Brownsville, Texas 78520

Dear Judge Torteya:

I am a rising third year law student at the University of Texas School of Law and am pleased with the opportunity to submit this application for a clerkship in your chambers for the 2024-2025 term. As an only child of immigrant parents born and raised in Harlingen, Texas, I bear a deep appreciation for how the law and its agents affect the lives of ordinary people in the Rio Grande Valley. It is my hope to lend my unique combination of skills, integrity, and commitment to further this court's mission to administer the law consistently and equitably.

Though my military background might suggest that my service-oriented attitude was learned, I must emphasize its earlier presence. Taking responsibility for the care of others was a dominant theme during my pre-college life. My parents' former undocumented status long motivated my success to secure their welfare. During high school, I became a Certified Nursing Assistant and developed amicable relationships with nursing home residents during my training. Though college presented a welcome opportunity for self-exploration, my desire to serve continued to motivate my pursuits. While maintaining a distinguished academic reputation, I began a relationship working with the United States Marine Corps that continues to this day. While my post-graduation plans as a Judge Advocate are confirmed, I hope that my first act of professional service will be directed at the community that raised me as a clerk in your chambers.

Included is a resume, transcripts, a writing sample, and letters of recommendation from professors Lawrence G. Sager and Patrick Woolley and former employer, Mrs. Victoria C. North. Professor Lucas A. Powe has agreed to serve as a supplementary contact. These contacts may be reached as follows:

Professor Lawrence G. Sager, The University of Texas School of Law
(lsager@law.utexas.edu; lawrencesager@gmail.com; 512-232-1355; 512-698-6842)

Professor Patrick Woolley, The University of Texas School of Law
(pwoolley@law.utexas.edu; 512-232-1323)

Professor Lucas A. Powe, The University of Texas School of Law
(spowe@law.utexas.edu; 512-232-1345)

Mrs. Victoria C. North, Texas Comptroller of Public Accounts, Austin, Texas
(Victoria.North@cpa.texas.gov; 512-463-6243)

Additionally, the Law School's clerkship advisor, Kathleen Overly, is available to answer your questions. You may reach her at koverly@law.utexas.edu or 512-232-1316. Please let me know if I may be of further assistance.

Respectfully,

Carlos A. Torres

Enclosures

CARLOS TORRES
7901 West Business 83 Unit 15 | Harlingen, Texas | 956.406.4770
Carlos.TorresD98@gmail.com | https://www.linkedin.com/in/cat98/

EDUCATION

The University of Texas School of Law, Austin, TX
J.D. Expected May 2024
GPA: 3.52

- AMERICAN JOURNAL OF CRIMINAL LAW, 2022–2023, *Staff Editor*
- *Teaching Assistant* for Professor Lucas Powe, Spring 2023
- The Paper Chase Legal Writing Competition Top 10 Finalist, 2022 (Memorandum judged against submissions from all Texas law schools)
- Volunteer Student-Note Taker, 2022–2023
- University of Texas Election Supervisory Board, 2021–2022, *Secretary*
- American Constitution Society, 2021–2022, *1L Representative & Member*

The University of Texas at Austin, Austin, TX
B.A. *magna cum laude* in Philosophy & Government *with High Honors*, May 2021
GPA: 3.95

- Student Conduct Board, 2018–2021, *Member & Hearing Foreperson*
- Sanger Learning Center, 2019, *Peer Coordinator* (Study group organizer and materials drafter)
- The Project, February 2018 & 2019, *Volunteer* (University-wide largest single day of community service)

WORK EXPERIENCE

Teacher Retirement System of Texas, Austin, TX
Legal and Compliance Intern, June – August 2023
Texas Comptroller of Public Accounts, Fiscal and Agency Affairs Legal Services, Austin, TX
Legal Intern, June – August 2022

- Wrote and submitted internal memoranda covering a variety of issues on request from legal counsel.
- Attended and observed meetings concerning litigation strategy and legislative proposals.

United States Marine Corps, Austin, TX
2nd Lieutenant, Reserves*,* June 2021 – Present

- Voluntarily assist staff with administration of the Austin, Texas Officer Selection Office.
- Voluntarily lead and assist Officer Applicants with physical training and leadership skill development.

United States Marine Corps Officer Candidates School, Quantico, VA
Officer Candidate, June – August 2020

- Led subordinate units in tactical training exercises under evaluation.
- Delegated tasks to subordinate leaders when assigned leadership roles under evaluation.
- Executed all necessary administrative movements and inspected for completion and accountability.

United States Marine Corps Officer Selection Office, Austin, TX
Officer Applicant and Marine, September 2018 – Present

- Voluntarily participated in physical and leadership skill training to earn spot in Officer Candidates School.
- Voluntarily lead and assist Officer Applicants with physical training and leadership skill development following graduation from Officer Candidates School but prior to commissioning.

INTERESTS & SKILLS

- Leading group-oriented cardiovascular and calisthenic exercise
- Collecting artistically recognized vintage films
- Progressive and alternative rock lyrical appreciation
- Can speak Spanish (advanced) and Italian (intermediate)

Updated on June 1, 2023

June 26, 2023

The Honorable Ignacio Torteya, III
Federal Building and United States Courthouse
600 East Harrison Street, Room 203
Brownsville, TX 78520

Dear Judge Torteya:

I am writing in warm support of Carlos Torres, who has applied to be your law clerk. My experience with Carlos has come at two points in his law school career, in contexts where I have been able to learn a fair amount about his relation to law, legal thought, and legal institutions.

In his first semester at UT, Carlos was in my Constitutional Law class. At UT, Con Law 1 is typically taught in small sections of about 35 students. I teach a demanding version of the course, which is conceptually complex and normatively deep. I seldom cold call on students, but I encourage them to participate in the conversation of the class, both by posing questions to them and taking their questions and interventions seriously.

In this past spring semester — at the end of his second year of law school—Carlos was a student in my Supreme Court Seminar. The students in the seminar are divided into groups of nine. Over the course of the semester, they act as justices of their "Supreme Court" and decide nine cases actually pending before the Supreme Court: The students work from the actual briefs in each case, and they conference at length on each case three times, and each student-justice is responsible for producing two substantial opinions and one smaller opinion.

As a first semester, first-year student, Carlos was eager and infatuated with the law in general and constitutional law in particular. He was also, in effect, intellectually awkward. Adjusting to the conceptual rigor of law school was difficult for him. In the end, he did fine in class and on the exam, but not exceptionally so. I think he felt a little bruised by being received as less than an immediate star. His final exam was solid but not exceptional. He got an A- in the course.

This past spring semester, in the Supreme Court seminar, Carlos had grown into the shoes of his expectations for himself. His nine-person court was filled with extremely serious, hard-working, and contentious but civil fellow judges. And, as you know, the term was filled with complex and difficult cases. Carlos's eager engagement with constitutional law was still evident, but now it was accompanied creative, reflective, disciplined, and intelligent thought and argument. His presence on his court was commanding, and his written opinions were excellent. (He received an A, but that if anything understates my enthusiasm for his work.)

I think Carlos will make an excellent law clerk. The opportunity to work with you, in turn, would be a marvelous opportunity for Carlos to grow still further. I am happy to be able to recommend him to you. If I can be of any further help, please feel free to contact me.

With sincere regards,

Lawrence G. Sager
Alice Jane Drysdale Sheffield Regents Chair
The University of Texas at Austin

GLENN HEGAR TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

P.O. Box 13528 • Austin, TX 78711-3528

February 14, 2023

Dear Judge:

Carlos Torres is a bright, hard-working law student who interned for our legal division in the summer of 2022. Carlos was more prolific than our typical summer interns. I was impressed by the speed and depth of his research. Our division serves as the agency's in-house counsel and, as you might imagine, our work involves a wide-ranging variety of legal areas – everything from state fiscal law to cybersecurity to federal securities law, plus the random questions that pop up. We support one-of-a-kind programs like the only 529 college savings plans in Texas and the first-in-the nation state-owned bullion depository. And we often add new ones like the new broadband development and opioid abatement grant programs. Because nobody does exactly what we do, we hire attorneys with: (1) the research skills necessary to dive in and learn new areas, (2) the years of experience needed to spot issues, and (3) the creativity to find solutions.

Because of the variety in our work and our team's emphasis on legal research, Carlos was able to research a wide variety of state and federal legal questions for multiple attorneys. These attorneys advise the Property Tax Assistance Division, Unclaimed Property Division, Texas Broadband Development Office, Fiscal Management Division, Chapter 313 Tax Abatement Program, and Prepaid Higher Education Tuition Program. Carlos researched legal questions relating to broadband services, powers of attorney, property value study litigation, unclaimed property, reinvestment zones, telework, state fee disclosure laws for college savings plans, and federal securities law disclosure practices and policies for state issuers.

While most of his research was for other attorneys, his first assignment was for one of my areas. Because new law school graduates tend to need better writing skills, I personally taught Carlos how to edit his memo, for brevity and clarity as well as substantive analysis. I continued to track his progress over the summer, both through positive feedback from our attorneys and through his participation at our bi-monthly staff meetings where we discuss our current legal work.

During his time here, Carlos approached each research assignment enthusiastically and produced high quality work in a timely fashion. He did a great job balancing competing assignments and prioritizing work. Carlos asked insightful questions and produced thoughtful responses. His memos were well-researched and well-written. I am confident that he will be a valuable asset to any future employers.

Please contact me at (512) 463-6243 if you have any questions.
Sincerely,

/s/ Victoria North

Victoria North
General Counsel for Fiscal and Agency Affairs

Comptroller.Texas.Gov • 512-463-4000 • Toll Free 1-800-531-5441 • Fax 512-305-9711

June 26, 2023

The Honorable Ignacio Torteya, III
Federal Building and United States Courthouse
600 East Harrison Street, Room 203
Brownsville, TX 78520

Dear Judge Torteya:

I write to recommend Carlos Torres for a judicial clerkship.

Mr. Torres was a student in my federal courts class in the fall of 2022 and earned an A- in the course. I was impressed (and a little surprised) by how well Mr. Torres did. I was surprised because in brief conversations outside of class during the course of the semester, Mr. Torres had indicated on multiple occasions that he found the class hard going. I should instead have paid much closer attention to how hard Mr. Torres was working to learn the material, the excellent questions he asked in and out of class, and his ability on one occasion to answer a question that had stumped the rest of his very able classmates. Mr. Torres later explained to me how he had prepared to take the final exam, and I was deeply impressed by his organizational skills and work ethic.

In reviewing his transcript, I was also surprised to learn that he had chosen to take my federal courts class—the most procedurally-oriented federal courts class offered at Texas—given that his first-semester performance in civil procedure was among his lowest grades. That he nonetheless chose to take my federal courts class and take it for a grade is noteworthy. I was also pleased to note as I reviewed his transcript that he substantially improved his grades after his first semester and again after his second semester. So I would respectfully urge you to ignore his relatively rough start as a law student (as he was acclimating to the study of law) and focus instead his more recent performance in law school.

I am confident that Mr. Torres has the analytical ability and the work ethic to make an excellent clerk and am pleased to have the opportunity to recommend him. Please do not hesitate to let me know if I can be of further assistance.

Respectfully,

Patrick Woolley
A.W. Walker Centennial Chair in Law
The University of Texas School of Law

CARLOS TORRES
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WRITING SAMPLE

This sample was written as part of a Supreme Court seminar whereby I, along with eight students, played the role of Supreme Court Justices in disposing of cases on the actual Supreme Court's docket. This sample is part of the majority opinion for *Moore v. Harper*, the independent state legislature (ISL) case out of North Carolina.

The central issue was whether Article I, Section 4 of the United States Constitution, also known as the Elections Clause, which reads, in part, "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof" precluded state courts from subjecting relevant state legislature prescriptions to state constitutional limits. The full opinion held that it did not.

The relevant part reproduced here analyzes the meaning of "prescribed" as used in the Elections Clause and argues that it is best understood as delegating primary authority to state legislatures to outline the rules for administering federal elections, subject to the normal constraints of their and the federal constitutions. In reaching this conclusion, I first dispose with petitioner's primary textual arguments and then make an affirmative argument of my own.

Because this piece was extracted from a larger opinion, citation format reflects the relationship of the cited sources in the context of the whole work from which this sample was extracted. The citation format thus does not assume that the sample reproduced below is the complete work. I was fully responsible for writing this opinion.

III.

Due to this facial ambiguity in the meaning of "prescribe" under the Elections Clause, we turn to context to adduce the true meaning of the term.[1]

A.

We thus make note of the fact that "prescribe" and its variations appear four other times throughout the US Constitution, not including its use in the Elections Clause.[2] This is important because the canon of consistent usage counsels that we should read a term to bear consistent meaning where it appears throughout a text, absent material variation in its use.[3]

First, Article I, sec. 7, concerning presentment of legislation to the President for approval, directs that proposed legislation will become law notwithstanding presidential veto if reconsidered and repassed by the requisite proportion of both houses of Congress "according to the Rules and Limitations *prescribed* in the Case of a Bill."[4] Second, Article I, sec. 8, empowering Congress to provide for maintenance of the militia, reserves to the states the power to train the militia "according to the discipline *prescribed* by Congress."[5] Third, Article IV, sec. 1, the Full Faith and Credit Clause, empowers Congress, by general laws, to "*prescribe* the Manner" in which the "Acts, Records, and Proceedings" of the states "shall be proved, and the Effect thereof."[6] Finally, the Third Amendment prohibits the unconsented to quartering of soldiers in time of peace or war, "but in a manner to be *prescribed* by law."[7]

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[1] *See Yates v. United States*, 574 U.S. 528, 539 (2015) (resorting to extensive tour through canons of construction to disambiguate term contained in Sarbanes-Oxley Act).
[2] *See* U.S. Const. art. I, § 7, cl. 3; U.S. Const. art. I, § 8, cl. 1; U.S. Const. art. IV, § 1; U.S. Const. amend. III.
[3] *See Brown v. Gardner*, 513 U.S. 115, 118 (1994).
[4] U.S. Const. art. I, § 7, cl. 3.
[5] U.S. Const. art. I, § 8, cl. 1.
[6] U.S. Const. art. IV, § 1.
[7] U.S. Const. amend. III

At a first gloss, the argument has some force that giving the Elections Clause's use of "prescribe" consistent meaning with these foregoing uses involves imputing onto the power to prescribe a power to direct exclusive of external modification. Afterall, the uses of "prescribe" and its variations highlighted above involve delegations of power to Congress. On some level, it would be foolhardy to suggest that when the power to prescribe is given to Congress, it means nothing more than that Congress is to be the first mover on such matters and carries no implication of exclusivity as, for example, against the states. Nonetheless, we think there is sufficiently material variation in the Constitution's four other uses of "prescribe" to justify a departure from the ordinary consequences of the consistent usage canon.[8]

The fact that these four other uses involve *Congress*'s power to prescribe is a significant reason to view the prescription power under the Elections Clause as bearing unique meaning. This is because when Congress makes lawful prescriptions in pursuance of authority granted by the Constitution, those prescriptions become "the supreme Law of the Land."[9] Under our Supremacy Clause jurisprudence, valid laws passed pursuant to legitimate constitutional authority preempt and displace conflicting exercise of power by the states.[10] Thus, it is the Supremacy Clause itself which supplies the necessary implication that the power to prescribe, when exercised by Congress, does include a corollary feature of preemption against at least some conflicting exercises of authority.

The Elections Clause, to the contrary, stands utterly alone as the only instance in the Constitution in which the power to prescribe is granted not to Congress, but the state legislatures. Absent a constitutional protection like the Supremacy Clause to vest lawful state prescriptions

[8] *See United States v. Garcon*, 54 F.4th 1274, 1279 (11th Cir. 2022) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012)).
[9] U.S. Const. art. VI, cl. 2
[10] *See M'Culloch v. State*, 17 U.S. 316, 326–30 (1819).

with some immunity from conflicting exercises of power, it is not at all implausible to conclude that the power to prescribe under the Elections Clause is indeed nothing more than the power to be the first mover.

But supposing that there is no material variation in any of these instances of the Constitution's use of the term "prescribe" that would permit us to ignore the canon of consistent usage, it still doesn't appear obvious that Petitioners can elude the applicability of state constitutional principles on the state legislatures' exercise of the prescription power. If we instead read every instance of "prescribe" consistently, it becomes clear that the power of a legislative body to prescribe is not exclusive of the authority of that body's founding charter to condition and limit the prescription. This is because when Congress prescribes, it is always subject to the limitations of the Federal Constitution. Read consistently, the conclusion that the state legislatures are limited by their own constitutions when they prescribe pursuant to the Elections Clause flows just as naturally.

It is apparent then, that the canon of consistent usage will not settle our inquiry as to whether the state legislature's power to prescribe under the Elections Clause is exclusive of the power of state judiciaries to subject those prescriptions to state constitutional review and, if it does, it may actually do so contrary to Petitioner's position.

B.

Petitioner's next rely on the *expressio unius* canon to supply the necessary implication of independence of state legislature prescriptions under the Elections Clause from their constitutions.[11] The argument goes like this: the Elections Clause delegates power specifically to the state legislatures to prescribe the time, place, and manner of conducting federal congressional elections; the Elections Clause does not mention state judiciaries or their ability to subject those

[11] Pet'r['s] Br. 18.

prescriptions to state constitutional scrutiny; it would be strange for the Elections Clause to nonetheless permit state constitutional review of those prescriptions by the state judiciary despite the absence of any such explicit permission to that effect; therefore, the Elections Clause should not be so construed.[12]

We recognize that the *expressio unius* principle, that expression of one item in an associated group excludes items left unmentioned, is a powerful tool of statutory and constitutional interpretation.[13] Nonetheless, this court's more recent attitudes toward *expressio unius* have significantly diluted the extent of the canon's influence. The applicability of *expressio unius* is thus heavily context sensitive. Consequently, we have said that circumstances must support "a sensible inference that the term left out must have been meant to be excluded" and that the items to which the *expressio unius* argument applies must be part of an associated group or series "justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence."[14] In other words, "*expressio unius* does not apply unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it."[15]

Present circumstances do not persuade us that *expressio unius* operates as an inexorable command to adopt Petitioner's interpretation of the Elections Clause. For while the Elections Clause says nothing about state constitutional scrutiny by state judiciaries, it similarly neglects to say a thing about federal constitutional scrutiny by either state or federal courts. Yet, Petitioners do not, nor could they, seriously contend that silence on this latter point is a reason to think state legislature prescriptions under the Elections Clause are immune from federal constitutional limits.

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[12] *Id.* at 17, 18.
[13] *N.L.R.B. v. SW Gen., Inc.*, 580 U.S. 288, 302 (2017).
[14] *Id.*; *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003).
[15] *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 381 (2013).

Instead, Petitioners explain that "judicial review is a background assumption of the American constitutional system," ostensibly to justify how it is that federal constitutional review remains undisturbed despite the Elections Clause's apparent neglect to make any mention of it in what Petitioner's otherwise argue is a sweeping grant of authority to state legislatures concerning the administration of federal congressional elections.[16] Yet it is apparent that equally important background assumptions underlay our constitutional system, and ones with which we are often familiarized in grade school: federalism, separation of powers, and checks and balances. The historical record is replete with founding-era concerns about the abuse of legislative power, both at the state and federal level, and apparent confidence in the ability of judicial review to reign in potential mischief by bringing constitutional limits to bear on the exercise of such power.[17] Indeed, contemporaneous with the founding, it was extremely commonplace for the various states to codify limitations on their legislatures' administration of federal congressional elections in their constitutions.[18] Furthermore, the founding generation unquestionably appreciated the bedrock principle of all constitutional government: that government power, whose very existence is owed to the founding charter under which the government is organized, is necessarily defined and limited by that charter.[19]

To the extent that these background principles were obviously on the minds of the framing generation, it is a reasonable assumption that the framers understood that when the states

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[16] Pet'r['s] Br. 11.
[17] *See* Madison, *The Federalist No. 48* 308–309 (1788); Hamilton, *The Federalist No. 78* 470 (1788); *See generally The Federalist No.51* (1788); Madison, *The Federalist No. 47* 301 (1788).
[18] *See* Del. Const. of 1792, art. VIII, §2; *Id*. art. IV, §1; Md. Const. of 1776, art. XIV (1810); Ga. Const. of 1789, art. IV, §2; Pa. Const. of 1790, art. III, §2; Ky. Const. of 1792, art. III, §2; Tenn. Const. of 1796, art. III, §3; Ohio Const. of 1803, art. IV, §2; La. Const. of 1812, art. VI, §13.
[19] Gordon S. Wood, *Foreword: State Constitution-Making in the American Revolution*, 24 Rutgers L.J. 911, 921 (1993) (quoting 1 Harry A. Cushing, *The Writings of Samuel Adams* 185 (1904)); 1 Max Farrand, *The Records of the Federal Convention of 1787* 88 (1911); Hamilton, *The Federalist No. 81* 482 (1788); 1 Kermit L. Hall & Mark David Hall, *Collected Works of James Wilson* 712 (2007).

exercise their prescription power under the Elections Clause, thereby exercising their power to legislate, a power which owes its existence to the state constitutions, they do so subject to state constitutional limits.

There is no dispute that the states which comprise our union, including North Carolina, are constitutional governments. Thus, when the states legislate in general, and certainly when they legislate to administer federal congressional elections, they do so pursuant to authority which is limited by *their* constitutions. Similarly, to the extent that Petitioners allege judicial review to be an assumption inherent in constitutional government, they cannot escape the conclusion that *some* adjudicative entity is properly authorized to interpret and espouse the meaning of *those* constitutional constraints which, in the case of North Carolina, would derive from the North Carolina Constitution. And though Petitioners may deny it, we fail to see why the North Carolina judiciary can't be that entity. In fact, given that the Federal Judiciary is comprised entirely of courts of limited jurisdiction wherein the interpretation of state law is, by and large, normally avoided, it's hard to make the case that anything other the North Carolina judiciary could possibly be the proper entity to interpret the meaning of the state's own constitutional limitations.[20]

All that being said, we perceive two plausible alternatives that explain the framers' failure to mention state constitutional review in the Elections Clause: the first is that the framers intended the Elections Clause to free state legislatures from such scrutiny; the second is that, like with federal constitutional review, the notion that state legislatures would be constrained by their state constitutions in exercising their prescription power was an implicitly understood background assumption meriting no explicit mention. Only the former possibility can vindicate Petitioner's

[20] *See Home Depot U. S. A., Inc. v. Jackson*, 139 S. Ct. 1743, 1746 (2019); *Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149, 151–54 (1908) (refusing to adjudicate a state law breach of contract claim without diversity jurisdiction or a well pleaded federal question); *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009).

expressio unius argument since only this scenario involves a deliberate choice by the framers to say "no" to the notion that state constitutions should constrain state legislatures in their exercise of Elections Clause power.[21] However, since historical circumstance does not foreclose the latter possibility, the *expressio unius* canon simply does not resolve the issue.

C.

As of yet, we have not determined what the nature of the prescription power under the Elections Clause actually is, we have merely explained why Petitioner's view of the matter is not as obvious as they claim. We now take an affirmative stance: the nature of the state legislatures' prescription power under the Elections Clause is the power to be the original architects, the "first movers," of the plan for conducting federal congressional elections, subject to federal and state constitutional limits. We believe this conclusion follows for two reasons: first, the evidence that the framers looked favorably on state constitutional review as a check on state legislative overreach substantially outweighs any evidence to the contrary; and second, the common law derogation canon demands clearer textual indication that the Elections Clause was meant to free state legislatures from state constitutional limits.[22]

As we have explained, circumstances evincing founding-era appreciation for constitutional limitations and judicial review as indispensable to the preservation of free government in light of the threat of legislative overreach is voluminous and powerful evidence that the Elections Clause should not be understood idly to codify an astonishing exception to this principle.[23] Additionally, practices contemporaneous with the founding and immediately ensuing decades demonstrates that

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[21] *Peabody Coal Co.*, 537 U.S. at 168; *Marx*, 568 U.S. at 381.
[22] *See Brown v. Barry*, 3 U.S. 365, 367 (1797); *Robert C. Herd & Co. v. Krawill Mach. Corp.*, 359 U.S. 297, 304 (1959).
[23] *See The Federalist No. 48*, *supra*, at 308–309; *The Federalist No. 78*, *supra*, at 470; *See generally The Federalist No.51*; *The Federalist No. 47*, *supra*, at 301; Wood, *supra*, at 921; 1 Farrand, *supra*, at 88; *The Federalist No. 81*, *supra*, at 482; Hall & Hall, *supra*, at 712.

states did codify limitations on the power of their legislatures to regulate the process of conducting federal congressional elections in their constitutions.[24]

On the other hand, Petitioner's contrary evidence is suspect at best. Their strongest source of support, the so called Pinckney Plan, allegedly presented at the Philadelphia Constitutional Convention, would have delegated to the states, as opposed to the state legislatures, the power to prescribe the time, place, and manner of holding congressional elections.[25] Because this proposed language was allegedly rejected in favor of the Elections Clause actually in our Constitution, Petitioners argue this demonstrates the founding-era intent to free the state legislatures from their constitutions in the realm of congressional election administration.[26] Yet, scholarly review of the Pinckney Plan has cast considerable doubt on its authenticity and there is now substantial reason to believe that the Plan was never in fact presented at the Philadelphia Convention.[27]

Petitioners also rely on a statement by Alexander Hamilton in Federalist No. 59 that authority under the Elections Clause "must either have been lodged wholly in the national legislature, or wholly in the State legislatures…"[28] Yet, this statement needn't necessarily be read to suggest an intent to sever state legislatures from their own constitutional constraints. Hamilton, like the Elections Clause itself, did not mention federal constitutional limits, but Petitioners nonetheless concede that those limits would constrain the Elections Clause power even if it had been lodged "wholly in the national legislature."[29] Thus, what it apparently means for Elections Clause power

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[24] Del. Const. of 1792, art. VIII, §2; *Id*. art. IV, §1; Md. Const. of 1776, art. XIV (1810); Ga. Const. of 1789, art. IV, §2; Pa. Const. of 1790, art. III, §2; Ky. Const. of 1792, art. III, §2; Tenn. Const. of 1796, art. III, §3; Ohio Const. of 1803, art. IV, §2; La. Const. of 1812, art. VI, §13.
[25] 1 Farrand, *supra*, at 597.
[26] Pet'r['s] Br. 2.
[27] 1 John Franklin Jameson, *Studies in the History of the Federal Convention of 1787* 117 (1903); 3 Farrand, *supra*, at 595; William M. Meigs, *The Growth of the Constitution in the Federal Convention of 1787* 14 (1900).
[28] Hamilton, *The Federalist No. 59* 362 (1788).
[29] *See* Pet'r['s] Br. 2–3.

to be lodged "wholly in" a legislative body does not disclaim implicitly understood constraints imposed by the legislative body's founding charter. Consequently, were Elections Clause power indeed lodged "wholly in" the state legislatures, Hamilton's statement is perfectly consistent with implicitly understood limitations imposed by the states' respective constitutions.

The weight of the evidence against Petitioner is further fortified by the interpretive suggestion of the common law derogation canon. That canon counsels courts to construe statutes in derogation of the common law strictly such as to be in harmony with the common law as far as possible.[30] Admittedly, this canon has primarily been invoked in the interpretation of statutes as opposed to the Constitution itself and, even then, much less aggressively than was customary once upon a time. Nonetheless, we do not think these considerations foreclose its proper use in the present case. To the contrary, for several reasons, we think that the common law derogation canon holds significant water for the present occasion.

First, this court has given effect to the common law derogation canon as far back as 1797, a mere decade following ratification of the Constitution, and is thus an invaluable tool in interpreting that document by virtue of its contemporaneous judicial usage.[31]

Second, whatever may be said about the propriety of applying the common law derogation canon to insulate American common law doctrines that have developed well after ratification from textual usurpation; it is nonetheless clear that this court has guarded common law principles *deeply rooted in Anglo-American law* especially closely. Thus in *Morissette v. United States*, we declined to affirm the conviction of a scrapper indicted for conversion of spent government bomb casings absent a jury's determination of the requisite criminal intent, notwithstanding the statute's omission to mention such a requirement.[32] We described the "contention that an injury

[30] *Barry*, 3 U.S. at 367; *Imbler v. Pachtman*, 424 U.S. 409, 418 (1976).
[31] *Barry*, 3 U.S. at 367.
[32] *Morissette v. United States*, 342 U.S. 246, 247–50 (1952).

can amount to a crime only when inflicted by intention" as "no provincial or transient notion" but as having achieved "unqualified acceptance…by English common law in the Eighteenth Century…"[33] We explained that "Congressional silence as to mental elements in any Act merely adopting into…statutory law…a concept of crime already so well defined in common law…" did not authorize courts to read those deeply rooted elements out of statutory text by judicial initiative.[34] To do so, we insisted, demanded "affirmative instruction from Congress."[35]

Third, the particular context of constitutional interpretation actually augments, rather than diminishes, the influential effect of the common law derogation canon. This is because, at the time of ratification, the inference that the newly chartered government would bring with it common law expectations was especially strong. Indeed, at ratification, essentially by definition, there were practically no other legal norms but those furnished at common law. Thus, incorporation of common law assumptions would have been a necessary means of providing the newly created constitutional government with a framework on which to operate.

Consequently, there is even more reason to suppose that the Elections Clause, absent some affirmative instruction, was meant to prescribe a rule consistent with the common law expectation that chartered government entities are constrained by the terms of their own charters in all of their official actions and that the tribunals of those entities are empowered to interpret and enforce those constraints. The use of the common law derogation canon is thus useful, especially when we would otherwise be stuck with a hopeless ambiguity. In any case, we emphasize that our use of this canon here is merely to supplement the near decisive inference against Petitioner's view of the Elections Clause which the historical record discussed above already supplies.

[33] *Id.* at 250–51.
[34] *Id.* at 262–63.
[35] *Id.* at 273.

For present purposes, application of the common law derogation canon is just another means of corroborating the strength of the inference derived from the historical record. To the extent that the founders understood judicial review and constitutional limitation of legislative power to be a lynchpin feature of constitutional government, there is a strong common law presumption in favor of preserving that status quo. We refuse to construe the Elections Clause to upset that common law tradition, especially when its plain language is evidently amenable to an equally plausible interpretation that does not disentangle the common law fabric, as we have shown. In light of the fact that Petitioner's interpretation of the Elections Clause would do serious violence to the common law view, absent a clearer indication that state legislatures were meant to administer congressional elections free of their own constitutions, we instead adopt the interpretation which we have described as the first mover reading.

Applicant Details

First Name	**Manpreet**
Middle Initial	**K**
Last Name	**Bhandal**
Citizenship Status	**U. S. Citizen**
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Address	**Address** Street **1190 Mission St. Apt. 413** City **San Francisco** State/Territory **California** Zip **94103** Country **United States**
Contact Phone Number	**714-348-1459**

Applicant Education

BA/BS From	**California State Polytechnic University, Pomona**
Date of BA/BS	**May 2020**
JD/LLB From	**University of California, Hastings College of the Law** **http://uchastings.edu**
Date of JD/LLB	**May 15, 2024**
Class Rank	**20%**
Law Review/Journal	**Yes**
Journal(s)	**Hastings Law Journal**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Professional Organization

Organizations	**Just the Beginning Organization**

Recommenders

Stewart, Therese
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Wall-Cyb, Teresa
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Manpreet K. Bhandal

1190 Mission St, #413 • San Francisco, CA 94103 • (714) 348-1459 • mbhan5396@uchastings.edu

June 25, 2023

The Honorable Judge Ignacio Torteya
United States District Court, Southern District of Texas
600 E. Harrison St., Suite 203
Brownsville, Texas 78520

Dear Judge Torteya,

I am a rising third-year student at UC Hastings College of the Law, San Francisco. I am writing to express my strong interest in a clerkship position in your courtroom. After a summer judicial externship with The Honorable Justice Therese Stewart at the California Court of Appeal, I became interested in becoming a judicial clerk. I will be joining Perkins Coie this summer as a summer associate and hope that I can bring my experience from Perkins to your chambers.

During my second year of law school, I served as a staff editor on the Hastings Law Journal. In this role, I not only improved my writing skills by editing articles from practitioners, professors, and talented law students, I also wrote a journal note. My note explored the death penalty and its implications on the criminal justice system. I was also a teaching assistant in a writing centered Constitutional Law class where I had the opportunity to edit student work, further honing my writing skills. Last summer, while externing for Justice Therese Stewart, I authored a judicial opinion focusing on tort law in California. This allowed me to gain substantive research experience while also allowing me to work closely with Justice Stewart to improve my writing. This Fall, I will also be doing the Mediation Clinic at Hastings, which will allow me to mediate disputes in San Mateo Superior Court and the San Francisco Human Rights Commission. In addition, I will serve as the Supreme Court of California editor for the Hastings Law Journal and work closely with the California Constitution Center to write articles on constitutional issues affecting California.

Working in your chambers aligns well with my longstanding commitment to public service. I have enjoyed serving on multiple student organizations while in law school and working collaboratively with my peers and other professionals. I am also part of the Judicial Internship Opportunity Program and serve as one of the regional mentors for the program, connecting students with resources during their judicial externships.

My writing skills, record of academic excellence, and proven success in leadership roles have prepared me well for the rigors of working in your chambers. Thank you for taking the time to consider my candidacy.

Respectfully,

Manpreet K. Bhandal

Manpreet K. Bhandal

Manpreet K. Bhandal

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EDUCATION

University of California, Hastings College of the Law, San Francisco, CA
Juris Doctor Candidate, May 2024
GPA: 3.541 (Top 15% = 3.593)

- Hastings Law Journal, *Executive Supreme Court of California Editor*
- Legal Research & Writing II, *Best Oralist*
- Chancellor's Diversity and Equity Inclusion Working Group, *1L Student Member*
- South Asian Law Student Association, *Vice President of Alumni Relations*
- First-Generation Professionals, *Secretary*

California Polytechnic State University, Pomona, CA
Bachelor of Arts, History, May 2020

- Asian Islander Student Center, *Social Justice Leader*
- African American Student Center, *Diversity Ambassador*
- Sikh Student Association | History Club, *President*

EXPERIENCE

Mediation Clinic, San Francisco, CA
Student Mediator, Fall 2023

Perkins Coie, San Francisco, CA
Summer Associate, Summer 2023

Justice Therese Stewart, California Court of Appeal, First Appellate District, San Francisco, CA
Judicial Extern, Summer 2022

- Authored a judicial opinion on local tort law
- Planned meetings with Justice Stewart to discuss oral arguments
- Researched California Evidence Code issues pertaining to family law cases

Tsang and Associates, Artesia, CA
Legal Intern, Winter 2020

- Conducted and summarized intake interviews with new clients for immigration practice
- Researched and drafted waivers to stay deportation proceedings
- Collaborated with attorneys on filings and participated in strategy meetings

Subway, La Habra, CA
Manager, 2017-2020

- Created and adjusted work schedules for 10 employees
- Planned and revised delivery schedules based on special events and regular course of business
- Resolved issues with daily operations to ensure customer satisfaction and employee retention

United Sikh Movement, Riverside, CA
Southern California Coordinator, Summers 2016, 2017, 2018, 2019

- Initiated creation of Sikh Student Association chapters across college campuses
- Identified fundraising sources, developed ideas for events, and gave toolkit presentations.

LANGUAGES & INTERESTS

- Fluent in Punjabi and Hindi
- Enjoy Chinese Song Dynasty poetry, Gurmukhi calligraphy, and Tolstoy novels

June 26, 2023

The Honorable Ignacio Torteya, III
Federal Building and United States Courthouse
600 East Harrison Street, Room 203
Brownsville, TX 78520

Dear Judge Torteya:

I write in support of Manpreet Bhandal's application for a clerkship with your chambers. Manpreet served as an extern in my chambers during the summer of 2022, and I found her thoroughly delightful for many reasons.

First, Manpreet is a strong writer and analytical thinker. She was a rising 2L at the time and so had only one year of law school under her belt. Yet she had mastered basic research and writing skills and was developing strong legal reasoning skills. I had her work with her fellow intern on an appeal in a tort case in which summary judgment had been granted and the issues were both legal and factual. The case involved sovereign immunity statutes that limit tort liability for government entities. The law itself was complex for the externs, and the summary judgment procedure added to the complexity. Manpreet and her fellow extern worked together on the project and prepared both outlines and drafts of the opinion, which proved very helpful to me. The quality of Manpreet's work was very good and she was a dedicated individual who gave her all to the externship.

Second, Manpreet was open to feedback and to learning. She is a good listener, does not take critique as criticism and she absorbs what she learns and uses it.
Third, Manpreet has a wonderful personality. She is thoughtful, deliberate and unusually mature for a person her age. She has a quiet self-confidence that is coupled with genuine humility. She worked exceptionally well with her fellow extern and is a good team player. I worked with her directly and enjoyed her company that summer. She was working in the courthouse and spent significant time in chambers with me, which was a welcome respite from COVID-related distancing. Her warmth and thoughtful demeanor were a balm during a trying time.

In short, Manpreet has the skills and temperament to make an excellent law clerk, and I am confident she will be of great assistance to the judge or judges who hire her. Please feel free to contact me if you would like additional information.

Very truly yours,

Therese M. Stewart

Therese Stewart - Therese.Stewart@jud.ca.gov - 415 865-7350

June 26, 2023

The Honorable Ignacio Torteya, III
Federal Building and United States Courthouse
600 East Harrison Street, Room 203
Brownsville, TX 78520

Dear Judge Torteya:

I am honored to write this recommendation on behalf of Manpreet Bhandal. She will be an exceptional judicial clerk because she is an effective problem-solver, an excellent writer, and an engaged, productive collaborator who works with high integrity and a growth mindset. I have known her as a student in my legal research and writing course and as a leader on campus. I am grateful to have had the good fortune to work with this extraordinary law student. I give her my highest recommendation for a clerkship.

Ms. Bhandal is a disciplined problem-solver who employs sharp attention to detail and a commitment to useful processes. She asks great questions and remains curious as she works through legal problems. She moves toward the difficult parts of a problem, establishes comfort with the technical aspects of the law and how to explain it, and thrills to crafting solutions. Likewise, she is a studious writer who came to law school with strong narrative and analytical skills. She maintained a fluid, yet precise style as she adapted quickly to the solid structure of legal writing. Her work is efficient and a pleasure to read.

As a student in my legal writing class, she was uncommonly good because she engaged with both the course material and her peers. She embraced challenging concepts with sincere interest and in so doing, she developed expertise in many researching and writing skills. In addition to her contributions to class discussion and oral argument practices, her integrity and kindness lifted class performance. Overall, last year's students produced stronger papers than past groups. Ms. Bhandal's contributions to class and willingness to coach her peers as she gained understanding had a strong impact on student improvement.

It is no surprise that Ms. Bhandal was selected as the Supreme Court of California Articles Executive Editor for the UC Law SF Journal. She has the necessary leadership and technical abilities in spades. I also have no doubt that she will balance this position with her schoolwork and clerkship at Perkins Coie. Ms. Bhandal enjoys a challenge, and I have met few people in or outside the law school who can match her grace as she moves through it all.

Finally, Ms. Bhandal is particularly adept at overcoming challenges because of her growth-oriented mindset. She is a first-generation law student who has made her own way to a professional career since high school. She makes no excuses and sees mistakes as opportunities. This mindset keeps her open to taking the kinds of intellectual risks that will be valued in the court. I recommend Ms. Bhandal highly for a clerkship, and I welcome additional requests for information to support her application.

Truly yours,

Teresa Wall-Cyb

Teresa Wall-Cyb - wallcybteresa@uchastings.edu

June 26, 2023

The Honorable Ignacio Torteya, III
Federal Building and United States Courthouse
600 East Harrison Street, Room 203
Brownsville, TX 78520

Dear Judge Torteya:

Manpreet Bhandal, who is completing her second year of law school here, is applying to be your law clerk after graduation. She has asked me to write in support of her application, and I am happy to do so because she has been a very good student and is an exemplary of our community.

Ms. Bhandal was a student in my Civil Procedure I course in her first semester of law school. Students typically find this course difficult because it deals with topics they have not addressed previously and they find these topics rather dry and abstract. Ms. Bhandal was not like that. Instead, she was engaged throughout the semester and a frequent contributor in class. On the final exam (with essay questions modeled on recent court decisions), she did an excellent job, receiving an A- for the course. She got similar grades in her other courses.

She has also chosen courses that should prepare her to be an outstanding law clerk. Right now, she is in my Civil Procedure II course, and also in Federal Courts and Evidence. Last semester, she took Antitrust, Criminal Procedure, and Employment Law, all courses that cover topics a law clerk should know about. In my Civil Procedure II class, as during her first year, Ms. Bhandal has been an active participant in class discussions.

So she has a very good and broad-based law school record. She's also an editor on the Hastings Law Journal. She was recognized as Best Oralist in Legal Writing and Research. And she has been a real standout in community service -- serving as a student member of a law school working group, and vice president of two student associations -- the American Constitution Society and the South Asian Law Student Association. In this, she is carrying forward on her outstanding extracurricular work from pre-law school days, including serving then as President of a student association and additionally serving on other associations.

Perhaps more pertinently, she already has law clerk experience, having served during Summer 2022 as a judicial extern to Justice Therese Stewart of the California Court of Appeal.

On top of all that, she's a really nice person, exactly the sort of person you would like to have in chambers. So I strongly urge you to give every consideration to Manpreet Bhandal's application. If I can provide further information, please do not hesitate to contact me, either at the phone number above or at my home number -- 655-6086.

Sincerely,

Richard L. Marcus
Horace O. Coil ('57) Chair in Litigation

Manpreet K. Bhandal

1190 Mission St, #413 • San Francisco, CA 94103 • (714) 348-1459 • mbhan5396@uchastings.edu

This writing sample is taken from an appellate brief produced for my legal research and writing course. The case was a real U.S. Supreme Court matter and involved allegations of the appellant prescribing opioids outside the usual course of professional practice. Appellant Xiulu Ruan,a licensed physician, petitioned for a writ of certiorari after the United States Court of Appeal for the Eleventh Circuit held that Dr. Ruan prescribed drugs outside the usual course of professional practice as stated in the Controlled Substances Act. The Eleventh Circuit also found that the usual course of professional practice standard was an objective standard as Respondent contended and not subjective as Dr. Ruan argued. It was also decided by the Eleventh Circuit that the good faith defense to criminal conduct as described in the Controlled Substances Act, should be narrowly construed.

For the assignment, I represented Respondent, the United States of America, in its position that Dr. Ruan prescribed drugs not within the usual course of professional practice and without a legitimate medical purpose. This writing sample has been edited for length. I am happy to provide the full copy upon request.

B. The Objective Standard is the Proper Standard to Use to Prevent Conflation of the Civil and Criminal Standard and Protect as Many Physicians and Patients as Possible.

The government must prove its case beyond a reasonable doubt in criminal cases to protect defendants and not blur the line between civil and criminal liability. *United States v. Smith*, 573 F.3d 639, 649 (8th Cir. 2009). The beyond-a-reasonable-doubt standard allows the jury to distinguish between criminal liability and civil negligence, thereby protecting innocent doctors from being convicted. *Id.* Allowance of a good faith defense also ensures that the jury will properly distinguish between the civil and the criminal standards because good faith is not available as a defense in civil liability. *Id*. Additionally, a physician's good faith defense and conduct in prescribing in the usual course of professional practice is subject to an objective standard. *Id.* at 648. Thus, the jury must focus on whether the doctor's behavior conforms to generally accepted medical standards in the United States. *Id.*

Likewise, a practitioner is not free to disregard generally accepted medical practices. *United States v. Vamos*, 797 F.2d 1146, 1151 (2d Cir. 1986); *see also United States v. Norris*, 780 F.2d 1207, 1209 (5th Cir. 1986) (holding that the objective standard test must be applied). According to the *Vamos* court, acting in good faith means acting within the confines of a defined standard of treatment. 797 F.2d at 1151. The court reasoned that the objective standard must be followed to protect the public from a group of people who have the greatest access and the greatest opportunity to divert highly addictive substances to uses not protected under the CSA. *Id*. at 1154. The court further stated that because the medical field is so regulated it does not make sense to use anything other than the objective standard. *Id*.

Only after looking at how medical professionals conduct and comport themselves is it possible to assess whether a defendant has deviated from the usual course of professional practice. *United States v. Wexler*, 522 F.3d 194, 205 (2d Cir. 2008). A good faith jury instruction

that introduces the contemplation of the defendant's intentions as to what they thought was the standard is not objective and does not serve the purposes of the CSA according to the court in *Wexler*. *Id.* at 206. The court emphasized that the words "honest" and "belief" work in service of emphasizing that honesty and belief must be directed toward professional judgment and a reasonable and honest belief in conduct that conforms with prevailing medical practices. *Id*. at 207.

For instance, the proper standard by which to gauge a good faith defense is the objective standard. *Feingold*, 454 F.3d at 1001. The court in *United States v. Feingold* found that a physician's conduct must hold up against a national standard of care. *Id*. at 1009. The court defined the national standard of care as what is generally done in the medical profession. *Id*. In that case, the physician prescribed drugs to people he had never examined, those he knew to be addicts, and he prescribed in such large quantities that it could have either killed or severely injured his patients if consumed. *Id.* at 1013. The court stated that this was certainly outside the course of professional practice and that it is appropriate when making that determination for a physician's conduct to be judged against a benchmark of accepted standards in the medical community. *Id.*

Furthermore, good faith requires the defendant to act in reasonable accordance with proper medical practice and the law. *Godofsky*, 943 F.3d at 1016. It requires the honest exercise of professional judgment to ascertain a patient's needs. *Id.* at 1026. The *Godofksy* court explained that good faith must always be objective, and it requires a physician to act in a way that follows the rules and regulations of medical practice. *Id*. Objective good faith is a defense, the court reasoned, when a physician acts within the scope of ordinary professional practice. *Id.* The court further found that a physician can be in violation of the CSA when he believes that in

an individual case, he subjectively knows better than the general medical profession. *Id*. In assessing jury instructions, the *Godofsky* court held that courts are given a great deal of discretion in crafting jury instructions to relay this information to the jury and the instructions are judged in entirety, not in isolation. *Id*. at 1019. The court also reasoned that if the jury instructions did not substantially impair a defendant's defense, the instructions will not be overturned. *Id.*

Here, the trial court properly applied the objective standard of good faith in its jury instructions. (J.A. 65.) The court refused to allow a separate supplemental instruction distinguishing the civil and criminal standard because that would further confuse the jury. (J.A. 62.) However, the jury instructions also made it clear that there was a distinction the jury had to make between the criminal and civil standard with the use of words reasonable doubt. (J.A. 67.) The court even mentioned reasonable doubt seven times prior to giving the jury instruction. (J.A. 90.) To further alleviate any confusion, the trial court defined reasonable doubt for the jury. (J.A. 91.) The defense also mentioned the difference between the criminal and civil standards during closing arguments making it certain that the jury would know the difference between the two. (J.A. 70.)

Jury instructions are not taken in isolation and lawyers have a wide range of strategies during trial of making sure that juries do not get the two confused including expert witness testimony and pre-trial motions. *Godofsky*, 943 F.3d at 1019; *see also* Ronald W. Chapman II, *Defending Hippocrates: Representing Physicians In The Wake Of The Opioid Crisis*, 43-OCT Champion 40, 41 (2019). The defense also gave an example of a surgeon leaving a sponge in a patient as an example of a civil standard, not a criminal standard. (J.A. 77.)

In giving the objective instructions, the trial court clarified that the problem with Ruan's proposed instruction was that it was subjective, and it needed to be objective. (J.A. 65.) A personal belief that patients are benefitting from certain treatments, simply is not a defense to criminal conduct under the CSA. *See Godofosky*, 943 F.3d at 1026. However, the court also added that the defendant maintains that he acted in good faith at all times in three different places on the charge sheet given to the jury. (J.A. 68.) A court is not required to adopt the jury instruction language suggested by a defendant at all. *See Godofsky*, 943 F.3d at 1011. Despite this, the Eleventh Circuit still added that Ruan maintained that he was acting in good faith at all times into the jury instruction. (J.A. 68.) Therefore, the Eleventh Circuit properly affirmed the objective good faith jury instructions.

C. The Subjective Standard Should Not Be Used for the Good Faith Defense Because It Will Leave Defendants Outside the Control of Law Enforcement and the Standard Does Not Adhere to the Requirements of the CSA.

One person's treatment methods alone do not constitute a medical practice. *Norris*, 780 F.2d at 1209. A physician's conduct is tested by "approved practice" and "accepted limits." *United States v. Moore*, 423 U.S. 122, 335 (1975). A proper jury instruction cannot turn on the distinctiveness and peculiarity of the defendant's own practice. *United States v. Hurwitz*, 459 F.3d 463, 478 (4th Cir. 2006). Ignorance of the law is not a defense to criminal prosecution and the defense should not be extended to physicians. *McFadden v. United States*, 576 U.S. 186, 187 (2015).

Allowing a defendant to inject a subjective standard into the good faith defense would allow him to decide for himself what constitutes proper medical treatment. *Hurwitz,* 459 F.3d at 479. In *Hurwitz*, the court explained that the subjective standard goes against what was decided in *Moore* which was to restrict and not expand a physician's conduct. *Id.* at 479; *see also Moore*, 423 U.S. 122 at 335. The Supreme Court in *Moore*, by mentioning that there are accepted limits

to a physician's conduct, used an objective test as should be used. *Hurwitz,* 459 F.3d at 479. To allow a physician to substitute his own views against the accepted medical standards would be to undermine drug enforcement. *Id.* at 480; *see also Rosenberg,* 515 F.2d at 195 (holding that a doctor would be free under the subjective standard to give out prescriptions on a street corner and the law would still not prohibit that conduct). The court in *Hurwtiz* held that to let a doctor define the parameters of what constitutes professional practice would be immunize the doctor against criminal liability of any sort. *Hurwitz*, 459 F.3d at 481.

Similarly, the guise of innovative medical practices cannot be used to escape criminal prosecution. *Moore*, 423 U.S. at 144. In *Moore*, this Court noted that while Congress was aware when drafting the CSA that physicians require legitimate experimentation, there must be limits because of the high likelihood of abuse. *Id*. The defendant in *Moore* did not offer physical examinations, ignored the results of urinalysis tests, took no precautions as to the misuse of the drugs, and prescribed large quantities of drugs with no instructions as to their use. *Id.* at 128. This Court held that approved practice methods are pivotal for a physician raising a defense of his actions and those approved practices must be in line with the medical profession. *Id.* at 145. The intent of Congress was to have physicians practice medicine within approved limits, not to cease following those limits in the name of experimentation. *Id.* at 142.

Further, Section 841(a) makes it unlawful for anyone to knowingly or intentionally commit the offense of distributing a controlled substance. *United States v. Collazo*, 84 F.3d 1308, 1323 (9th Cir. 2021). In determining whether Congress intended mens rea to apply to noncontiguous words and phrases, a natural reading of the statutory language is preferred. *Id.*

Applicant Details

First Name	**Margaret**
Last Name	**Ford**
Citizenship Status	**U. S. Citizen**
Email Address	**mford5@mail.stmarytx.edu**
Address	**Address** Street **1011 Broadway Street, Apt. 306** City **San Antonio** State/Territory **Texas** Zip **78215** Country **United States**
Contact Phone Number	**8305152039**

Applicant Education

BA/BS From	**Bowdoin College**
Date of BA/BS	**May 2020**
JD/LLB From	**St. Mary's University School of Law** **https://law.stmarytx.edu/**
Date of JD/LLB	**May 15, 2024**
Class Rank	**15%**
Law Review/Journal	**Yes**
Journal(s)	**St. Mary's Law Journal**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Pearson, Nickey
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(207) 522-4176
Wyatt, Paula
pwyatt@wyattlawfirm.com
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Johnson, Vincent
vjohnson@stmarytx.edu
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

MARGARET FORD

1011 Broadway Street, San Antonio, Texas 78215 • (830) 515-2039 • mford5@mail.stmarytx.edu

June 26, 2023

The Honorable Ignacio Torteya, III
United States District Court for the Southern District of Texas
600 Harrison Street, Brownsville TX 78520

Re: 2024–2025 Judicial Clerkship Position

Dear Judge Torteya,

My name is Margaret Ford, and I am currently a third-year student at St. Mary's University School of Law. I am writing to express interest in the clerk position with you at the United States District Court for the Southern District of Texas. After reviewing the application requirements, I believe my work ethic, coupled with my enthusiasm to expand my knowledge of the law, make me the perfect candidate for the clerk position.

Before beginning law school at St. Mary's, I worked alongside several personal injury attorneys at various firms in an effort to rectify the wrongs committed against innocent people who lacked the ability to do so themselves. While that work formed the basis of my law experience, my desire to assist those in need first came to be when I lived in Quito, Ecuador for several years as a young girl. After witnessing the inconceivable poverty and inequity in Ecuador, I knew that my calling was to help those who could not help themselves.

After returning from Ecuador to the United States, I continued in my efforts to learn more about ways in which I could promote the rights of unrepresented groups. While at Bowdoin College, I double majored in Government and Legal Studies and Hispanic Studies with a concentration in International Relations. After studying Spanish throughout college and living in Spain for a semester, I became fluent in Spanish. Now, while at St. Mary's, my goal is to acquire a more comprehensive understanding of the law and explore a wide variety of fields of law. In fact, last summer, I had the opportunity to complete an internship at the Comal County District Attorney's Office, working primarily with victims of family violence and sexual assault. Moreover, as a Staff Writer for the *St. Mary's Law Journal*, I was able hone my focus and writing skills even closer on marginalized groups as I researched my comment topic, which explored the fairness and practicability of *Batson* challenges in racially biased criminal trials. These two experiences not only afforded me hands-on experience and research-intensive exposure to the field of criminal law, but also allowed me to do precisely what I set out to do many years ago: help those who cannot help themselves. Having had this experience, I am eager to expand my scope of knowledge and explore the legal system from an entirely different vantage point. For that reason, I applied for and was lucky enough to receive opportunities to work with three extremely knowledgeable judges, one at the state appellate level and two at the federal district court level, this summer and this coming spring, all in an eager effort to expand my scope of legal knowledge as much as I possibly can.

While working under the judiciary will undoubtedly be very different than representing individual clients or prosecuting criminals, the overall mission—a zealous and faithful pursuit of justice—remains the same. This is precisely what I want to learn how to do. Moreover, as a woman, a first-generation law student, and a member of the LGBT community, I believe I will be able to offer a unique perspective in finding innovative solutions to complex legal issues. I would be absolutely honored to have the opportunity to clerk for you and help further Texas' judiciary system in its aim towards equity and justice. Thank you so much for your consideration, and please do not hesitate to contact me for additional information. I look forward to hearing from you at your earliest convenience.

Sincerely,
Margaret Ford

MARGARET FORD

1011 Broadway Street, San Antonio, Texas 78215 • (830) 515-2039 • mford5@mail.stmarytx.edu

EDUCATION AND AWARDS

St. Mary's University School of Law, San Antonio, Texas

Candidate for Doctor of Jurisprudence, May 2024

Grade Point Average: 3.05

- Staff Writer for the *St. Mary's Law Journal*, Vol. 54
- Dean's Scholarship
- Research Assistant for Professor Vincent Johnson
- Service Award for Second Most Pro Bono Hours in the 2L Class
- Women's Law Association
- St. Mary's OUTlaw Association
- Class Rank: 58/233

Bowdoin College, Brunswick, Maine
Bachelor of Arts, Majors: Government and Legal Studies and Hispanic Studies, May 2020
Grade Point Average: 3.45

- NCAA Division III Field Hockey Player
- IES Madrid, Madrid, Spain, Spring 2019

EXPERIENCE

United States District Court for the Western District of Texas, San Antonio, Texas

Judicial Intern for Senior U.S. District Judge David Ezra, January 2024 – May 2024

Judicial Intern for Chief U.S. Bankruptcy Judge Craig Gargotta, July 2023 – August 2023

- Drafted memos to convert into judicial opinions
- Conducted detailed case research to assist the clerks and staff attorneys

Texas Court of Appeals for the Fourth Judicial District, San Antonio, Texas

Judicial Intern for Justice Irene Rios, May 2023 – June 2023

- Communicated effectively with Justice Rios and her staff attorneys regarding pending cases
- Composed detailed memos to convert into judicial opinions

Comal County District Attorney's Office, New Braunfels, Texas

Intern, May 2021 – August 2022

- Performed thorough case research regarding disputed issues of criminal law
- Analyzed case details to make probable cause determinations to propose to the grand jury
- Communicated with witnesses, victims, and police officers regarding the details of each case

Wyatt Law Firm, San Antonio, Texas

Legal Writer, July 2020 – July 2021

- Conducted research of details of each case
- Compiled evidence and composed compelling demand letters, case studies, and brochures
- Assisted in settling over $7.7 million in cases that settled by demand letter

LANGUAGE SKILLS AND INTERESTS

- Fluent in Spanish (written and oral); some experience in Italian
- Field hockey, reading, writing, languages, history, politics

June 27th, 2023

To Whom It May Concern

It gives me great pleasure to write this recommendation on behalf of Maggie Ford. I have known Maggie for over 7 years, and she is an amazing young woman, she is bright, articulate and incredibly hard working. I have witnessed her take on many new challenges and her approach has always been the same, she is dedicated, enthusiastic and always totally committed to the task. She is so excited about the judicial clerkship position, and I believe she will approach this opportunity with the same positive attitude. Her passion for law and our legal systems has always been evident throughout the time I have known her. She cares about helping people and making the world a better place and this deep caring is pulling her in this direction.

Interpersonal skills are one of her most noteworthy attributes; she interacts well with those around her and gets along with everyone, this combined with her work ethic and perseverance will allow her to work well with a variety of constituencies in your chambers. Being on a team for 4 years she embraced continuous learning, teamwork and the importance of creating a positive atmosphere within groups of varied talents and backgrounds. She has an outgoing and generous personality that makes the people around her very comfortable. She has also demonstrated the ability to work collaboratively with her peers while often guiding a project quickly and effectively. She is respectful of others' opinions but is truly committed to what is morally right.

Maggie is absolutely thriving at Law School; she has a passion for helping people and has always spoken about this being her chosen career. If you accept Maggie's application for a clerkship, I can guarantee you will not regret your decision. She will be a conscientious, engaged and incredibly grateful. What has become clear to me about Maggie over time is the authenticity and depth of her dedication to others, her aspirations rest with sharing knowledge and contributing to the wellness of others. I have coached for 25 years and had the opportunity to work with some fantastic women, Maggie would be one of the finest.

I would encourage you without reservation to carefully consider Maggie's application; I can only give her the strongest possible recommendation. Please don't hesitate to contact me if you have any questions, I can be reached at 207-725-3329.

Nicky Pearson
Head Field Hockey Coach
Associate Athletic Director
Bowdoin College

WYATT
LAW FIRM
A PASSION FOR JUSTICE

June 12, 2023

To Whom It May Concern:

It is with great pleasure that I am recommending Maggie Ford for the judicial clerkship position.

Maggie worked for a year at my firm as a legal writer before she attended law school, and I was able to work closely with her during that time. While at the Wyatt Law Firm, Maggie proved to be a gifted writer and exhibited a strong work ethic. As a legal writer, she was tasked primarily with composing demand letters. I entrusted Maggie with several important cases, ranging from suits involving complex products liability disputes to sensitive wrongful death actions. Maggie not only communicated with my clients with tact, but also wrote compelling demand letters, which helped settle numerous cases.

I am confident that, if given the opportunity, Maggie would take constructive criticism, work assiduously, and prove to be a phenomenal addition to your chambers. I give Maggie my full support and confidently recommend her for the clerk position. If I can be of any further assistance in your review of her application, please feel free to contact me.

Sincerely,

Paula Wyatt
Founding Partner at the Wyatt Law Firm

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SEE TX R RAP RULE 47.2 FOR
DESIGNATION AND SIGNING OF OPINIONS.

Court of Appeals of Texas, San Antonio.

In the INTEREST OF **J.S.H.**, D.P.C.H.,
B.I.H., C.C.H., and C.L.H., II, Children

No. 04-23-00078-CV
|
Delivered and Filed: July 19, 2023

From the 45th Judicial District Court, Bexar County, Texas, Trial Court No. 2022PA00437, Honorable Charles E. Montemayor, Judge Presiding

Attorneys and Law Firms

APPELLANT ATTORNEY : Alana Pearsall, Pearsall Law Firm, PC, 11107 Wurzbach Rd., Ste. 602, San Antonio, TX 78230-2570.

APPELLEE ATTORNEY: Laura E. Durbin, Assistant Criminal District Attorney, 101 W. Nueva, Ste. 370, San Antonio, TX 78205.

Sitting: Patricia O. Alvarez, Justice, Irene Rios, Justice, Lori I. Valenzuela, Justice

MEMORANDUM OPINION

Opinion by: **Irene Rios**, Justice

***1** Appellant Father C.H. appeals the trial court's order terminating his parental rights to his children, **J.S.H**, D.P.H., C.C.H., and C.L.H (hereinafter, "the children").[1] Father C.H. challenges the sufficiency of the evidence supporting termination under statutory ground (E). Father C.H. also challenges the sufficiency of the evidence supporting the trial court's finding that termination was in the children's best interests. In his third issue, Father C.H. argues—because the termination of his parental rights was based on insufficient evidence—the trial court's conservatorship determination was an abuse of discretion. We affirm the trial court's order.

BACKGROUND

The Department of Family and Protective Services ("the Department") initially became involved in the underlying case on March 1, 2022, when it received a report of ongoing domestic violence in the home. The Department initiated removal proceedings after Mother and Father C.H. failed to cooperate with Family-Based Safety Services, and the Department received another report of domestic violence in the home.

On March 21, 2022, the Department filed a petition seeking emergency removal, temporary managing conservatorship of the children, and termination of Father C.H.'s parental rights. The trial court appointed the Department temporary managing conservatorship, and the Department split the children into various kinship homes with paternal relatives.

On January 17, 2023, the trial court held a bench trial. The trial court heard testimony from: Jonathan Kim, the Department's investigator; Natalie Robles, the Department's caseworker; and Father C.H.

On January 24, 2023, the trial court signed an order terminating Father C.H.'s parental rights to the children. Specifically, the trial court terminated Father C.H.'s parental rights based on statutory grounds (E), (N), (O) and (P) in subsection 161.001(b)(1) of the Texas Family Code. *See* TEX. FAM. CODE ANN. § 161.001(b)(1) (E), (N), (O), (P). The trial court also found that it was in the children's best interests to terminate Father C.H.'s parental rights. *See id.* § 161.001(b)(2). Father C.H. appeals.

STATUTORY REQUIREMENTS AND STANDARD OF REVIEW

To terminate parental rights pursuant to section 161.001 of the Texas Family Code, the Department has the burden to prove by clear and convincing evidence: (1) one of the predicate grounds in subsection 161.001(b)(1); and (2) that termination is in the best interest of the child. TEX. FAM. CODE ANN. § 161.001(b). Clear and convincing evidence requires "proof that will produce in the mind of the trier of fact a firm belief

or conviction as to the truth of the allegations sought to be established." *Id.* § 101.007.

***2** When reviewing the sufficiency of the evidence, we apply well-established standards of review. *See id.* §§ 101.007, 161.206(a); *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006) (conducting a factual sufficiency review); *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005) (conducting a legal sufficiency review).

"In reviewing the legal sufficiency of the evidence to support the termination of parental rights, we must 'look at all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true.' " *In re J.L.B.*, No. 04-17-00364-CV, 2017 WL 4942855, at *2 (Tex. App.—San Antonio Nov. 1, 2017, pet. denied) (mem. op.) (quoting *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002)). "[A] reviewing court must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so." *J.F.C.*, 96 S.W.3d at 266. "A corollary to this requirement is that a [reviewing] court should disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible." *Id.*

"In reviewing the factual sufficiency of the evidence to support the termination of parental rights, we 'must give due consideration to evidence that the factfinder could reasonably have found to be clear and convincing.' " *J.L.B.*, 2017 WL 4942855, at *2 (quoting *J.F.C.*, 96 S.W.3d at 266). "A [reviewing court] should consider whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding." *J.F.C.*, 96 S.W.3d at 266. "The [reviewing] court must hold the evidence to be factually insufficient if, in light of the entire record, the disputed evidence contrary to the judgment is so significant that a reasonable factfinder could not have resolved that disputed evidence in favor of the ultimate finding." *In re M.T.C.*, No. 04-16-00548-CV, 2017 WL 603634, at *2 (Tex. App.—San Antonio Feb. 15, 2017, no pet.) (mem. op.).

Further, in a bench trial, the trial court is the sole judge of the credibility of witnesses and the weight to be given their testimony. *HealthTronics, Inc. v. Lisa Laser USA, Inc.*, 382 S.W.3d 567, 582 (Tex. App.—Austin 2012, no pet.). This is because "the trial judge is best able to observe and assess the witnesses' demeanor and credibility, and to sense the 'forces, powers, and influences' that may not be apparent from merely reading the record on appeal." *Coburn v. Moreland*, 433 S.W.3d 809, 823 (Tex. App.—Austin 2014, no pet.) (quoting *In re A.L.E.*, 279 S.W.3d 424, 427 (Tex. App.—Houston [14th Dist.] 2009, no pet.)). We, therefore, defer to the trial court's judgment regarding credibility determinations. *Coburn*, 433 S.W.3d at 823–24.

STATUTORY GROUNDS

The trial court terminated Father C.H.'s parental rights under statutory grounds (E), (N), (O), and (P) in subsection 161.001(b)(1) of the Texas Family Code. Father C.H. only challenges the sufficiency of the evidence supporting statutory ground (E).

Only one predicate ground finding under subsection 161.001(b)(1) is necessary to support a termination judgment when there is also a finding that termination is in the child's best interest. *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003). Therefore, our analysis is usually complete if we conclude that the evidence is sufficient to support any single predicate ground. Because the findings under subsections 161.001(b)(1)(D) and (E) have consequences for termination of parental rights as to other children, termination on these grounds implicates significant due process concerns for Father C.H. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (M); *In re N.G.*, 577 S.W.3d 230, 234–35 (Tex. 2019). Here, due process requires us to review the trial court's findings under subsection 161.001(b)(1)(E) of the Texas Family Code. *See In re C.W.*, 586 S.W.3d 405, 407 (Tex. 2019) ("[W]hen a trial court makes a finding to terminate parental rights under section 161.001(b)(1)(D) or (E) and the parent challenges that finding on appeal, due process requires the appellate court to review that finding and detail its analysis.").

***3** Assuming a valid best-interest finding, the trial court may order termination of the parent-child relationship if the trial court finds by clear and convincing evidence that the parent has "engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child." *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E). Under subsection (E), endangerment encompasses "more than a threat of metaphysical injury or the possible ill effects of

a less-than-ideal family environment[.]" *Tex. Dep't of Hum. Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987). Instead, to endanger means to expose the child to loss or injury or to jeopardize his or her emotional or physical well-being. *Id.* The trial court must determine "whether evidence exists that the endangerment of the child's physical [or emotional] well-being was the direct result of [the parent's] conduct, including acts, omissions, or failures to act." *In re M.E.-M.N.*, 342 S.W.3d 254, 262 (Tex. App.—Fort Worth 2011, pet. denied).

Under subsection (E), the cause of the endangerment must be the parent's conduct and must be the result of a conscious course of conduct rather than a single act or omission. *In re J.T.G.*, 121 S.W.3d 117, 125 (Tex. App.—Fort Worth 2003, no pet.). "It is not necessary that the parent's conduct be directed at the child or that the child actually be injured; rather, a child is endangered when ... the parent's course of conduct creates a potential for danger which the parent is aware of but disregards." *In re R.S.-T.*, 522 S.W.3d 92, 110 (Tex. App.—San Antonio 2017, no pet.). "Courts may further consider parental conduct that did not occur in the child's presence, including conduct before the child's birth or after he was removed from a parent's care." *In re A.B.R.*, No. 04-19-00631-CV, 2020 WL 1159043, at *3 (Tex. App.—San Antonio Mar. 11, 2020, pet. denied) (mem. op.). "[E]ndangering conduct is not limited to actions directed towards the child." *In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009).

Here, Jonathan Kim, the Department's investigator, testified that domestic violence occurred between Mother and Father C.H. while they were receiving family-based services. Specifically, Kim testified he implemented a safety plan for Mother and the children, including taking Mother and the children to an out-of-town shelter because Mother expressed a concern regarding staying in local shelters as Father C.H. knew their locations. According to Kim, Mother admitted that she was the victim of ongoing domestic violence. "If a parent abuses or neglects the other parent or other children, that conduct can be used to support a finding of endangerment ...." *In re C.J.O.*, 325 S.W.3d 261, 265 (Tex. App.—Eastland 2010, pet. denied). Kim opined that the domestic disputes pose a danger to the children. *See R.S.-T.*, 522 S.W.3d at 110 ("Domestic violence, want of self-control, and propensity for violence may be considered as evidence of endangerment.").

The children also made outcries of domestic violence. Natalie Robles, the CPS caseworker assigned to the case, testified that Mother relayed several incidences in which Father C.H. threatened to physically harm her and even threatened to kill her. On at least two occasions, the domestic violence perpetrated by Father C.H. resulted in Mother being transported by law enforcement away from the residence. Robles indicated Mother did not feel safe from Father C.H. even though she had been transported away from the residence.

According to Robles, Mother wanted to complete her service plan; however, Father C.H. prevented her from doing so by taking her phone and restricting her transportation. Father C.H.'s course of conduct—preventing Mother from taking steps to reunify with her children—further supports a finding that Father has endangered the children's well-being and "subjects [them] to a life of uncertainty and instability." *In re S.D.*, 980 S.W.2d 758, 763 (Tex. App.—San Antonio 1998, pet. denied). The testimony regarding repeated incidences of domestic violence perpetrated by Father C.H. support's the trial court's endangerment finding under subsection (E).

***4** While illegal drug use alone may not always be sufficient to prove endangerment, it is certainly a factor to be considered in the overall analysis, as it potentially "exposes the child[ren] to the possibility that the parent may be impaired or imprisoned." *Walker v. Tex. Dep't of Fam. & Protective Servs.*, 312 S.W.3d 608, 617 (Tex. App.—Houston [1st Dist.] 2009, pet. denied). "Evidence of narcotics use and its effect on a parent's life and ability to parent may establish that the parent has engaged in an endangering course of conduct." *Id.* at 618; *see also J.O.A.*, 283 S.W.3d at 345 ("[A] parent's use of narcotics and its effect on his or her ability to parent may qualify as an endangering course of conduct."). Moreover, proof that the parent's drug use actually caused injury to the children is not required. *See Vasquez v. Tex. Dep't of Protective & Regul. Servs.*, 190 S.W.3d 189, 195–96 (Tex. App.—Houston [1st Dist.] 2005, pet. denied) (terminating Mother's parental rights without proof that her drug use actually injured her children).

Pursuant to his service plan, Father C.H. was required to submit to random drug tests and complete drug treatment. In total, Father C.H. missed ten drug tests. Father submitted to a hair follicle test, and the results led to concerns that he was using illegal substances. Father claimed the drug tests produced a positive result for drugs prescribed by his pain management doctor. However, Robles testified Father did not

respond when she asked for a medical release of information from the healthcare provider. *See Coburn*, 433 S.W.3d at 823–24 (deferring to the trial court's judgment regarding credibility determinations).

When asked if he uses drugs, Father C.H. claimed that he uses marijuana but has a medical marijuana card. However, Father C.H. never produced the card to Robles. Upon executing a warrant, law enforcement searched Father C.H.'s home and found illegal substances in Father C.H.'s pockets. When Kim interviewed the children shortly after this encounter, the children disclosed that there were additional drugs in the home. Robles testified that on one occasion during a supervised visit, Father fell asleep for twenty to thirty minutes and appeared to be, in her opinion, under the influence. Although Father C.H. denied showing up intoxicated to that visit, "the trial judge is best able to observe and assess the witnesses' demeanor and credibility, and to sense the 'forces, powers, and influences' that may not be apparent from merely reading the record on appeal." *Id.* at 823 (quoting *A.L.E.*, 279 S.W.3d at 427).

Last, Father C.H. did not successfully complete the drug treatment program required by his service plan. Father C.H.'s history of substance abuse and his unwillingness to remedy his substance abuse issues supports the trial court's finding that Father C.H. willingly engaged in a "course of conduct [that] creates a potential for danger which [he] is aware of but disregards." *R.S.-T.*, 522 S.W.3d at 110.

"Criminal conduct, prior convictions, and incarceration affect[ ] a parent's life and his ability to parent, thereby subjecting his child to potential emotional and physical danger." *See In re J.J.O.*, No. 04-18-00425-CV, 2018 WL 5621881, at *2 (Tex. App.—San Antonio Oct. 31, 2018, no pet.) (mem. op.). Generally, "conduct that subjects a child to a life of uncertainty and instability ... endangers the physical and emotional well-being of a child." *S.D.*, 980 S.W.2d at 763. At the time of trial, Robles testified that Father C.H. had a warrant for a bond violation. In May of 2022, Father C.H. was arrested for making a terroristic threat against Mother and subsequently violated his bond by having contact with Mother. As mentioned above, law enforcement found illegal substances on Father C.H. after it executed an arrest warrant arising from an assault charge in December 2021.

***5** Therefore, viewing all the evidence regarding domestic violence, illegal substance abuse, and criminal conduct in the appropriate light for each standard of review, we conclude the trial court reasonably could have formed a firm belief or conviction that Father C.H. "engaged in conduct ... which endangers the physical or emotional well-being of [his children]." *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E).

Accordingly, Father C.H.'s first issue is overruled.

BEST INTERESTS

Father C.H. also challenges the sufficiency of the evidence to support the trial court's finding that termination of his parental rights was in the best interest of the children.

When considering the best interest of a child, we recognize the existence of a strong presumption that the children's best interest is served by preserving the parent-child relationship. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006). However, we also presume that prompt and permanent placement of the child in a safe environment is in the child's best interest. TEX. FAM. CODE ANN. § 263.307(a).

In determining whether a parent is willing and able to provide the child with a safe environment, we consider the factors set forth in section 263.307(b) of the Texas Family Code.[2] *See id.* § 263.307(b). We also consider the *Holley* factors.[3] *See Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976). These factors are not exhaustive. *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). "The absence of evidence about some of these considerations would not preclude a factfinder from reasonably forming a strong conviction or belief that termination is in the child's best interest, particularly if the evidence were undisputed that the parental relationship endangered the safety of the child." *Id.* In analyzing these factors, we must focus on the best interest of the child, not the best interest of the parent. *Dupree v. Tex. Dep't of Protective & Regul. Servs.*, 907 S.W.2d 81, 86 (Tex. App.—Dallas 1995, no writ).

***6** Evidence that proves one or more statutory ground for termination may also constitute evidence illustrating that termination is in the child's best interest. *C.H.*, 89 S.W.3d at 28 (holding the same evidence may be probative of

both section 161.001(b)(1) grounds and best interest, but such evidence does not relieve the State of its burden to prove best interest). "A best-interest analysis may consider circumstantial evidence, subjective factors, and the totality of the evidence as well as the direct evidence." *See In re E.D.*, 419 S.W.3d 615, 620 (Tex. App.—San Antonio 2013, pet. denied). "A trier of fact may measure a parent's future conduct by his past conduct and determine whether termination of parental rights is in the child's best interest." *Id.*

Children's Ages, Vulnerabilities, and Desires

At the time of trial, the children were eleven, nine, seven, and four. Although the younger children may not be capable of expressing their desires pertaining to their relationship with their parents, "the fact finder may consider that the children have bonded with the foster family, are well-cared for by them, and have spent minimal time with a parent." *In re S.J.R.-Z.*, 537 S.W.3d 677, 693 (Tex. App.—San Antonio 2017, pet. denied).

Robles testified the children have bonded well with their foster parents, the placements are long-term placements, and the foster parents can meet the children's present and future physical and emotional needs. On the other hand, Robles testified that the children wish to return home with their mother and Father C.H. and that Father C.H. attended twenty of twenty-six visits. However, a child's young age renders the child vulnerable if left in the custody of a parent who is unable or unwilling to protect the child or attend to the child's needs. *Id.* During the visit when he fell asleep, Robles testified Father C.H. simply handed each child a cell phone to play with while he slept.

While the desires of the children weigh against termination, the vulnerability of their age weighs in favor of termination.

Plans for the Child and Physical and Emotional Needs of the Child

"[T]he prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest." TEX. FAM. CODE ANN. § 263.307(a). "The need for permanence is the paramount consideration for the child's present and future physical and emotional needs." *S.J.R.-Z.*, 537 S.W.3d at 693.

The trial court heard testimony that Father C.H. attended most of his weekly visits with the children, but Robles noted that Father C.H. fell asleep for about twenty to thirty minutes during one visit and simply handed a cellphone to each child to play with while he slept. Robles testified the children have bonded well with their kinship placements. According to Robles, the children's kinship placements are good caregivers, they foster sibling relationships, and they ensure that the children receive dental and medical care as needed. Robles also testified that the children are now in therapy and stated the current placements are suitable to provide for the children's emotional and physical needs now and in the future.

In contrast, Robles opined that Father C.H. is unable to support his children emotionally, stating:

> [Father C.H.] continues to state that he ... doesn't understand why [t]he Department's involved. He continues to fail to recognize how his involvement in the family's history of domestic violence has impacted the children.

Because the children's placements will provide them with permanency—as opposed to the environment of substance abuse and domestic violence created by Father C.H.—the trial court could have formed a firm belief or conviction that these factors weigh in favor of termination.

Emotional and Physical Danger, Harm to the Child, and History of Abusive Conduct

***7** In determining the children's best interests, the trial court considered "whether there is a history of abusive or assaultive conduct by the child's family ...." TEX. FAM. CODE ANN. § 263.307(b)(7). "[E]ndangering conduct is not limited to actions directed towards the child." *J.O.A.*, 283 S.W.3d at 345. "A factfinder may infer that past conduct endangering the well-being of a child may recur in the future if the child is returned to the parent." *In re D.M.*, 452 S.W.3d 462, 471 (Tex. App.—San Antonio 2014, no pet.). "This court considers a

parent's conduct before and after the Department's removal of the children." *S.J.R.-Z.*, 537 S.W.3d at 693.

Here, the trial court heard testimony that Father C.H. and Mother had been in an ongoing cycle of domestic violence since at least December 2021. As stated above, Father C.H.'s violent conduct poses a danger to the children. It does not matter whether the violent conduct was directed towards the children or only Mother. *See Boyd*, 727 S.W.2d at 533 ("We decline to adopt the interpretation ... by the court of appeals and expressly disapprove both its definition of 'danger' and its holding that danger cannot be inferred from parental misconduct."). Kim and Robles opined that Father C.H.'s conduct poses a danger to the children because of Father C.H.'s history with violence and his unwillingness to comply with the services meant to address the domestic violence.

Based on this evidence, the trial court could have formed a firm belief or conviction that Father C.H. would remain a danger to the children. These factors support the trial court's best interests findings.

History of Substance Abuse

Another factor to consider in a best interest determination is "whether there is a history of substance abuse by the child's family ...." *See* TEX. FAM. CODE ANN. § 263.307(b)(8). "A parent's drug use supports a finding that termination is in the best interest of the child." *In re L.G.R.*, 498 S.W.3d 195, 204 (Tex. App.—Houston [14th Dist.] 2016, pet. denied). "The factfinder can give 'great weight' to the 'significant factor' of drug-related conduct." *Id.* (quoting *In re K.C.*, 219 S.W.3d 924, 927 (Tex. App.—Dallas 2007, no pet.)).

As mentioned in the statutory grounds section above, Father C.H. produced concerning results on drug tests, missed ten drug tests, was in possession of illegal drugs when he was arrested, and the children informed Robles there were illegal drugs in the home. *See C.H.*, 89 S.W.3d at 28 (holding evidence of statutory grounds may be probative of best interest).

Accordingly, the trial court could have formed a firm belief or conviction that this factor weighs in favor of termination.

Programs, Acts or Omissions, Excuses for Acts or Omissions, Willingness to Effect Positive Change

According to his service plan, Father C.H. was required to participate in and complete a psychological evaluation, individual counseling, domestic violence classes, parenting classes, drug treatment, and pass random drug tests. Father C.H. signed the service plan, and it was made an order of the court. Robles testified the service plan was tailored to address the issues that led to the children's removal. The trial court's order expressly stated that failure to comply with the plan may result in termination of Father C.H.'s parental rights.

Initially, Father C.H. refused to cooperate with the Department. Once he acquiesced, Father C.H. only partially complied with the requirements under the plan. *See In re E.C.R.*, 402 S.W.3d 239, 249 (Tex. 2013) (holding failure to comply with a service plan may support a finding that termination of parental rights is in the child's best interest).

***8** Robles testified that Father C.H. successfully completed his parenting classes. Robles also testified that Father C.H. completed his drug treatment program; however, he was still required to reengage in another drug treatment program. While Father C.H. reengaged in individual counseling, he was discharged for noncompliance less than three months before trial. Father C.H. did not take the psychological evaluation and did not start his domestic violence classes.

The evidence showed that Father C.H. missed ten random drug tests, and the hair follicle test he took caused concern he was using drugs. *See In re A.M.L.*, No. 04-19-00422-CV, 2019 WL 6719028, at *4 (Tex. App.—San Antonio Dec. 11, 2019, pet. denied) (mem. op.) ("The trial court also could have reasonably inferred that [a parent's] failure to appear for drug testing indicated that [the parent] was avoiding testing because he was using drugs."). At trial, Father C.H. claimed he missed those tests because he was working out of town or was unable to obtain transportation. However, Robles testified that Father C.H. never presented pay stubs from when he claimed he was working and unable to take the drug tests. Robles also testified she offered Father C.H. transportation to his tests, but Father C.H. testified he was never offered transportation to take the tests. *See Coburn*, 433 S.W.3d at 823 (deferring to the trial court's credibility assessments since "the trial judge is best able to observe and assess the witnesses' demeanor and credibility, and to sense

the 'forces, powers, and influences' that may not be apparent from merely reading the record on appeal." (quoting *A.L.E.*, 279 S.W.3d at 427)).

Regarding his failure to start the domestic violence program, Father C.H. stated the program requires an admission that he is involved in domestic violence and his defense attorney advised him not to make that admission. However, the trial court could have disregarded this self-serving testimony and concluded Father C.H. did not take the steps necessary to rectify the domestic violence issues that led to the children's removal.

Although Father C.H.'s testimony presented an excuse for some of his shortcomings in completing his services, the trial court—as the factfinder—could have assigned more weight to Robles's testimony disputing Father C.H.'s excuses. *See Coburn*, 433 S.W.3d at 823–24 (explaining a reviewing court defers to the trial court's judgment regarding credibility determinations).

Accordingly, the trial court could have formed a firm belief or conviction that these factors weigh in favor of termination.

Having reviewed the record and considered all the evidence in the appropriate light for each standard of review, we conclude the trial court could have formed a firm belief or conviction that termination of Father C.H.'s parental rights is in the children's best interests. *See* TEX. FAM. CODE ANN. § 161.001(b)(2); *H.R.M.*, 209 S.W.3d at 108; *J.P.B.*, 180 S.W.3d at 573; *see also generally In re A.B.*, 437 S.W.3d 498, 503 (Tex. 2014) (recognizing a reviewing court need not detail the evidence if affirming a termination judgment). Accordingly, we hold the evidence is legally and factually sufficient to support the trial court's best-interest findings.

CONSERVATORSHIP

In his third issue, Father C.H. argues he should be named a possessory conservator of the children if the trial court's parental termination findings are based on insufficient evidence. However, because we have determined the trial court did not err in terminating Father C.H.'s parental rights, Father C.H. no longer has any legal rights with respect to the children and cannot challenge the portion of the termination order that relates to appointment of conservators for the children. *See In re J.C.R.*, No. 04-18-00949-CV, 2019 WL 2110109, at *7 (Tex. App.—San Antonio May 15, 2019, pet. denied) (mem. op.); *In re E.O.R.*, No. 04-18-00248-CV, 2018 WL 5808293, at *5 (Tex. App.—San Antonio Nov. 7, 2018, no pet.) (mem. op.); *In re L.T.P.*, No. 04-17-00094-CV, 2017 WL 3430894, at *6 (Tex. App.—San Antonio Aug. 9, 2017, pet. denied) (mem. op.).

CONCLUSION

***9** We affirm the trial court's order of termination.

All Citations

Not Reported in S.W. Rptr., 2023 WL 4610052

Footnotes

1 To protect the identity of the minor children in an appeal from an order terminating parental rights, we refer to the parents as "Mother," "Father C.H.," "Father M.S.," and the children by using their initials or as "the children." *See* TEX. FAM. CODE ANN. § 109.002(d); TEX. R. APP. P. 9.8(b)(2). The trial court's order terminated Mother's rights as to all five children: **J.S.H**, D.P.H, B.I.H., C.C.H., and C.L.H. Father C.H. is the biological father to all but one of the children, B.I.H. Father M.S. is the biological father of B.I.H. Although the trial courts order terminates the parental rights of Mother, Father C.H., and Father M.S. as to their respective children, only Father C.H. appeals.

2 These factors include:

> (1) the child's age and physical and mental vulnerabilities; (2) the frequency and nature of out-of-home placements; (3) the magnitude, frequency, and circumstances of the harm to the child; (4) whether the child has been the victim of repeated harm after the initial report and intervention by the department; (5) whether the child is fearful of living in or returning to the child's home; (6) the results of psychiatric, psychological, or developmental evaluations of the child [or] the child's parents ...; (7) whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home; (8) whether there is a history of substance abuse by the child's family or others who have access to the child's home; (9) whether the perpetrator of the harm to the child is identified; (10) the willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision; (11) the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time; (12) whether the child's family demonstrates adequate parenting skills ...; and (13) whether an adequate social support system ... is available to the child.
>
> TEX. FAM. CODE ANN. § 263.307(b).

3 These factors include: (1) the child's desires; (2) the child's present and future emotional and physical needs; (3) any present or future emotional and physical danger to the child; (4) the parental abilities of the individuals seeking custody; (5) the programs available to assist the individuals seeking custody to promote the child's best interest; (6) the plans for the child by the individuals or agency seeking custody; (7) the stability of the home or proposed placement; (8) the parent's acts or omissions which may indicate that the existing parent-child relationship is improper; and (9) any excuse for the parent's acts or omissions. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976); *see also In re E.C.R.*, 402 S.W.3d 239, 249 n.9 (Tex. 2013).

End of Document

Applicant Details

First Name	**Stefan**
Middle Initial	**A**
Last Name	**Pruessmann**
Citizenship Status	**U. S. Citizen**
Email Address	**stefan.a.pruessmann@vanderbilt.edu**
Address	**Address** Street **318 Village at Vanderbilt** City **Nashville** State/Territory **Tennessee** Zip **37212** Country **United States**
Contact Phone Number	**8044779199**

Applicant Education

BA/BS From	**College of William and Mary**
Date of BA/BS	**May 2021**
JD/LLB From	**Vanderbilt University Law School** **http://law.vanderbilt.edu/employers-cs/judicial-clerkships/index.aspx**
Date of JD/LLB	**May 10, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Vanderbilt Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Armstrong, Kevin
kevin.armstrong@fultoncountyga.gov
Enix, Amy
amy.enix@vanderbilt.edu
Sharfstein, Daniel
daniel.sharfstein@vanderbilt.edu
615-322-1890

This applicant has certified that all data entered in this profile and any application documents are true and correct.

STEFAN A. PRUESSMANN
318 Village at Vanderbilt, Nashville, Tennessee 37212
804-477-9199 | stefan.a.pruessmann@vanderbilt.edu

June 26, 2023

Judge Ignacio Torteya III
Reynaldo G. Garza-Filemon B. Vela U.S. Courthouse
600 East Harrison Street, Suite 203
Brownsville, Texas 78520

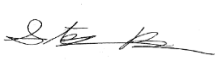
Dear Judge Torteya:

I am writing to apply for a 2024-25 term clerkship in your chambers. I am a third-year student at Vanderbilt Law School and a Managing Authorities Editor for the VANDERBILT LAW REVIEW.

I believe that I would make a strong addition to your chambers. I am currently interning for Judge Curtis L. Collier in the U.S. District Court for the Eastern District of Tennessee. I enjoy working closely with Judge Collier and his clerks in a variety of civil and criminal matters. I am learning the importance of thorough research, precise analysis, and clear writing. This experience has demonstrated to me the importance of collegiality and civility. Additionally, I was selected to be a Managing Authorities Editor for the VANDERBILT LAW REVIEW because of my attention to detail and thoroughness.

Enclosed are my resume with a list of references, law and undergraduate transcripts, writing sample, and letters of recommendation from Professors Sharfstein and Enix as well as Kevin Armstrong of the Fulton County District Attorney's Office. Please contact me if you need any additional information. Thank you for your consideration.

Respectfully,



Stefan Pruessmann

STEFAN A. PRUESSMANN

318 Village at Vanderbilt, Nashville, Tennessee 37212
stefan.a.pruessmann@vanderbilt.edu
804-477-9199

EDUCATION

Vanderbilt Law School Nashville, Tennessee
J.D. Candidate, May 2024
GPA: 3.650
Honors & Activities: VANDERBILT LAW REVIEW, Managing Authorities Editor; Dean's List; Chancellor's Law Scholar; Dean's Leadership Award; Phi Delta Phi; Jurists on the Go, Secretary; Asian Pacific American Law Student Association; Opening Statement.

College of William & Mary Williamsburg, Virginia
B.A., History and Government, May 2021
Honors & Activities: Dean's List; Filipino American Student Association, D7 Representative; William & Mary D.C. Summer Institute, American Politics Fellow.
Thesis: *The Discrepancy Between Filipino and Filipino-American Memories of Marcos*

EMPLOYMENT

U.S. District Court, Eastern District of Tennessee Chattanooga, Tennessee
Judicial Intern: Summer 2023
Worked with Judge Curtis L. Collier and his clerks on civil and criminal cases. Prepared change of plea colloquies. Drafted memos with recommendations regarding sentencing and summary judgment motions. Proofread drafts by pro se law clerks.

Fulton County District Attorney's Office Atlanta, Georgia
Intern: Summer 2022
Worked with Case Intake to prepare criminal cases for indictment by a grand jury. Evaluated initial charges and recommended adjustments when necessary. Used Odyssey and Evidence.com to prepare cases and retrieve necessary information respectively. Worked with Appeals on cases involving pro se appellants. Wrote responses to motions for new trial, proposed orders dismissing motions, and motions to dismiss.

Congressman A. Donald McEachin Richmond, Virginia
District Intern: Spring 2020 (ended prematurely due to COVID-19 pandemic)
Researched district outreach opportunities. Assisted constituents in casework process.

PERSONAL

Languages: German (A2 proficiency). Enjoy: cycling, hiking, vexillology, learning to play golf.

REFERENCES

Daniel Sharfstein, Dick and Martha Lansden Chair in Law, Vanderbilt Law School, daniel.sharfstein@vanderbilt.edu, 615-322-1890
Kevin Armstrong, Deputy District Attorney—Appeals, Fulton County District Attorney's Office, kevin.armstrong@fultoncountyga.gov, 912-223-5436
Amy Enix, Instructor in Law, Vanderbilt Law School, amy.enix@vanderbilt.edu, 615-343-1876

Kevin Armstrong
Deputy District Attorney
Fulton County District Attorney's Office
136 Pryor Street SW, Third Floor
Atlanta, Georgia 30303

February 17, 2023

I am the deputy district attorney who supervises the Appeals Unit for the largest prosecutor's office in the State of Georgia. Mr. Stefan A. Pruessmann worked under my supervision as an intern for the Appeals Unit for one-half of the summer of 2022.

My direct exposure with Mr. Pruessmann's work product is somewhat limited. However, that work product I did encounter was very good for a law student between their first and second years. The reason my exposure to Mr. Pruessmann's work product is limited is because he did work for the unit generally and not just for me specifically. I have spoken with two other attorneys for whom Mr. Pruessmann performed work, and each has responded positively.

On such attorney wrote:

> Mr. Pruessmann assisted me with drafting responses and proposed orders on several pro se cases. He did a good job—his work was accurate, he asked pertinent questions and sought clarification where needed, and he produced the work when I needed it. It was a pleasure to work with him and I would definitely work with him again.

Another wrote:

> Stefan undertook a legal research project at my request and timely provided a detailed report of his findings, which I used in drafting a response to a pro so motion for new trial.
>
> His research was focused and yielded citations to several key authorities relevant to the question at hand. His analysis was cogent and showed an appreciation for the granular details of each case as well as the big picture.

Moreover, it should be noted that Mr. Pruessmann did not simply wait around to be assigned work; when he was available to do additional work, he showed initiative and actively sought out additional assignments.

Interpersonally, I interacted with Mr. Pruessman on a daily or near-daily basis. I find him to be good-natured, respectful, and an enjoyable person to work with in a legal setting.

I would recommend Mr. Pruessman for future internships or clerkships.

Sincerely,

Kevin Armstrong

June 29, 2023

The Honorable Ignacio Torteya, III
Federal Building and United States Courthouse
600 East Harrison Street, Room 203
Brownsville, TX 78520

Dear Judge Torteya:

I am writing to you on behalf of Mr. Stefan Pruessmann, who is applying for a federal judicial clerkship. I have been in the legal profession for eight years, as a judicial clerk for the Hon. Marcia Phillips Parsons, an associate attorney, and now a legal writing instructor and the Assistant Director of Legal Research and Writing at Vanderbilt University Law School. I highly recommend Mr. Pruessmann for a judicial clerkship.

During the 2021-22 academic year Mr. Pruessmann was a student in my Legal Writing I and II classes, the traditional first year legal research and writing classes. Although Mr. Pruessmann struggled in the early part of fall 2021, he quickly found his footing and excelled. By the end of the Spring 2022 semester, Mr. Pruessmann was one of my best students, and received the second-highest score on his Appellate Brief. With the small class-sizes of Vanderbilt's legal writing sections, Mr. Pruessmann's ability to move from an A- in the fall to an A in the spring, with the second-highest overall score in his class, is truly impressive, and not something I often see. Mr. Pruessmann has demonstrated the ability to accept and absorb constructive criticism without taking it personally, and he used my early written and verbal feedback to move from the bottom of the class after the first graded assignment, to the top of the class after the final graded assignment in the fall.

In the classroom setting, Mr. Pruessmann consistently offered valuable insights and demonstrated his thorough preparation. He also demonstrated an ability to work well with others, collaborating with his classmates during group work and conducting himself with professionalism. In one-on-one meetings, Mr. Pruessmann always asked thoughtful questions about the material and demonstrated a thorough understanding of the law. He also pays close attention to detail, and would notice things in the writing assignment prompt or record that other students did not, using those details to help strengthen his legal argument. This attention to detail was also reflected in his bluebook and formatting scores, which were always high. As surprising as it may seem, this attention to detail was also evident in the fact that Mr. Pruessmann was also one of the few students to routinely submit papers free from typographical errors. I very much enjoyed working with Mr. Pruessmann during the 2020-21 school year, finding him to be an exemplary student, and believe he will excel as a judicial clerk.

I am confident that Mr. Pruessmann's analytical skills, coupled with his eagerness to learn and improve, would be an asset to your chambers. If I can be of further assistance, please feel free to contact me either via telephone, (203) 232-0773, or e-mail, amy.enix@vanderbilt.edu.

Best regards,

Amy Bergamo Enix
Instructor of Law
Assistant Director of Legal Research & Writing
Vanderbilt University Law School

June 29, 2023

The Honorable Ignacio Torteya, III
Federal Building and United States Courthouse
600 East Harrison Street, Room 203
Brownsville, TX 78520

Dear Judge Torteya:

It is my great pleasure to write this letter in support of Stefan Pruessmann's application for a judicial clerkship. Stefan was my student in the spring of 2022 in first-year Property, which had an enrollment of fifty-three. In classroom discussion, conversations during office hours, and at screenings of property-related movies that I organized all spring, I got to know Stefan well. He stood out for his stellar legal mind, intellectual curiosity, and boundless enthusiasm. I am confident that he will be a superb law clerk.

In Property, Stefan performed brilliantly. He volunteered often in class, and I found that I consistently learned from his incisive, thoughtful, and even witty comments about doctrine and policy questions. He frequently visited office hours and sent me terrific links to current news stories dealing with concepts that we were learning in class. His exam was one of the top seven exams in the class, a high A- on our uncompromising grading curve. It was a tightly argued set of essays about a statute allowing affordable housing uses to nullify residential covenants and about a recent case involving a proposal to use private eminent domain to run a gas pipeline through a Memphis neighborhood that had been founded after the Civil War by Black army veterans and their families. Stefan showed excellent command of a broad range of property doctrines and theoretical concepts, and in just about any other year his exam would have been an A. He identified key issues; his analysis was sharp and thickly textured; and his writing was clear.

Based on his performance in Property, I am entirely unsurprised that Stefan is having a stellar career at Vanderbilt. He has excellent grades, with a particularly notable spring 1L term (the most difficult and demanding semester at Vanderbilt). While his grades took a small dip this past fall while he was figuring out how to manage his schoolwork alongside Law Review, he bounced back in the spring with some of his best grades. He also participates robustly in a wide range of extracurriculars, including the Law Review as Managing Authorities Editor as well as the Asian Pacific Law Students Association (Stefan is part Filipino and in college wrote his senior thesis about the historical memory of the Marcos years, an area of expertise that became highly relevant during the recent presidential election), Vanderbilt's organization for first-generation law students, and our club for law student runners. Last summer, he did an externship with the district attorney's office in Atlanta, and this summer, he is a judicial intern for the Hon. Curtis Collier in the U.S. District Court in Chattanooga. Eventually he hopes to have a career doing litigation and appellate work in Washington, D.C. The delight Stefan takes in studying law and being a part of Vanderbilt's intellectual community is evident. The quality of his work and the way he is thriving here lead me to believe that as a law clerk, he will be someone whom a judge can trust to handle any case, big or small, with superior skill, sensitivity, and, above all, judgment.

Stefan's legal and intellectual talents are matched by his lovely personal qualities. He is a happy and optimistic person who has real intellectual curiosity while remaining appealingly down to earth. While the spring term of the first year can be a pressure cooker, a time when many students lose perspective, Stefan rose to the moment, unruffled and with his terrific sense of humor very much intact. When I organized extracurricular, entirely voluntary screenings of property-related movies throughout the spring term, Stefan helped suggest films and actively participated in wonderful conversations afterwards. In fact, I have enjoyed every conversation I have had with him. Based on my own experience as a law clerk, I know that Stefan will be a true joy to have in chambers—someone who is excellent at his job and a gem of a colleague. I give him my highest recommendation, with no reservations. If you would like to talk more about Stefan, please do not hesitate to contact me by phone, 615-322-1890, or by email, daniel.sharfstein@vanderbilt.edu.

Sincerely,

Daniel J. Sharfstein

Dick and Martha Lansden Professor Law and Professor of History

Director, George Barrett Social Justice Program

Daniel Sharfstein - daniel.sharfstein@vanderbilt.edu - 615-322-1890

Stefan Pruessmann Writing Sample

The following writing sample is an excerpt of my submission for the Motion Brief II assignment. I extracted the argument section from the assignment to conform to the standard writing sample length of approximately 10 pages. The text is unedited. If the rest of the assignment is desired, such as the statement of facts to provide further context, I will happily provide it. The original full assignment can also be provided if necessary. Citations to cases deviate somewhat from the Bluebook due to the rules of the assignment.

The assignment was to prepare a motion for partial summary judgment on the plaintiff's claim of gender discrimination, on the grounds that the plaintiff failed to provide sufficient direct or indirect evidence to survive summary judgment.

ARGUMENT

Defendant is entitled to summary judgment on Plaintiff's gender discrimination claim because Plaintiff has provided insufficient direct or indirect evidence to establish her claim.

Defendant's motion for summary judgment should be granted because Plaintiff has failed to provide direct or indirect evidence of discrimination. See Wright v. Southland Corp., 187 F.3d 1287, 1293 (11th Cir. 1999). To establish a *prima facie* claim of employer discrimination against a class protected under Title VII like gender, a plaintiff must provide either direct or indirect evidence of employer discrimination. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1); see Damon v. Fleming Supermarkets of Fla., Inc., 196 F.3d 1354, 1358 (11th Cir. 1999). If a plaintiff does not satisfy this burden, then summary judgment must be granted to the defendant. See Lewis v. City of Union City, 918 F.3d 1213, 1220 (11th Cir. 1999).

Summary judgment must be granted when the movant shows "there is no genuine dispute as to any material fact" and that they are "entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Plaintiff has failed to establish her discrimination claim by providing either (1) direct evidence of unambiguous discriminatory intent or (2) indirect evidence of favorable treatment of valid comparators outside of plaintiff's protected class. See Damon, 196 F.3d at 1358-59; Lewis, 918 F.3d at 1220-21. Because of this, WGCX is entitled to summary judgment on Plaintiff's gender discrimination claim. Fed. R. Civ. P. 56(a); see Lewis, 918 F.3d at 1220.

A. Plaintiff has not provided direct evidence of discrimination because she has not shown that her termination was driven by gender discrimination.

To establish a discrimination case using direct evidence, a plaintiff must provide evidence that shows the employment decision in dispute was motivated by discriminatory intent. See Damon, 196 F.3d at 1358-59. Plaintiff has not shown that her termination was influenced by discrimination beyond her own interpretation of certain remarks. See id.; Wright, 187 F.3d at 1306.

A plaintiff relying on direct evidence must show that the people behind the disputed employment decision were driven by discriminatory intent. See Wright, 187 F.3d at 1303-04. In Wright, a former 7-11 manager named James Wright ("Wright") sued his former employer, the Southland Corporation ("Southland"), for alleged age discrimination in his termination. Id. at 1288-89. However, Southland said that his firing was driven by Wright's rule violations and loss of merchandise. Id. at 1289. A district court grant of summary judgment to Southland for lack of direct evidence was reversed by the 11th Circuit, which found that remarks by Wright's superiors questioning his ability to work given his advanced age constituted sufficient direct evidence to survive summary judgment. Id. at 1303-05. Two work remarks were cited: one recommending that Wright retire due to his age and resulting inability to use computers, and one stating that Wright was too old. Id. at 1303-04. The superiors that made the remarks fired Wright several months later. Id. at 1304. Although Wright's termination cited his many work problems, the court said that the discriminatory remarks by those behind Wright's termination

meant a jury could reasonably find that the decision was caused by age discrimination, proscribing summary judgment. Id. at 1304-05.

For remarks to constitute direct evidence of discrimination, they must be so clearly discriminatory that there is no other possible intent. See Damon, 196 F.3d at 1359. In Damon, Walter Damon ("Damon") and Richard Kanafani ("Kanafani"), two Fleming store managers, sued their former employer Fleming for alleged age discrimination behind their terminations. Id. at 1357. One year after becoming district manager, Harry Soto ("Soto") fired five managers that were over forty years old, including the plaintiffs, and replaced them with managers that were under forty years old. Id. The plaintiffs presented as direct evidence of discrimination a comment by Soto following Kanafani's termination, which stated that Fleming needed "aggressive *young* men like [Kanafani's replacement] to be promoted." Id. at 1359. The court found that the remark was insufficient for direct evidence since the remark required an inference of discrimination against Kanafani, rather than explicitly expressing discriminatory animus, and in similar cases the court had refused to classify comments suggesting but not proving discrimination as direct evidence. Id.

Plaintiff's proffered evidence does not qualify as direct evidence of discrimination because there are no blatantly discriminatory remarks by the people responsible for her termination, Napier and Penningsworth. See Wright, 187 F.3d at 1303-04; Damon, 196 F.3d at 1359.

Plaintiff has not provided evidence that Napier or Penningsworth, the people behind her termination, possessed or were driven by discriminatory intent when they fired her. See Wright, 187 F.3d at 1303-04. The only remarks by Penningsworth regarding Plaintiff discuss her in terms of her ratings and strongest viewer demographics, with no mention of her gender or any impact it had on her job performance. (Penningsworth Decl. ¶¶ 11-12.) As for Napier, only one comment could possibly be interpreted as discrimination based on Plaintiff's gender: his Fourth of July remark calling Plaintiff a washed-up cow. (Napier Dep. 6.) However, in Wright one of Wright's supervisors recommended his retirement due to his age and the second one told another worker that he was looking for a younger store manager to replace Wright for being too old. 187 F.3d at 1303-04. In contrast, Napier's comment did not involve Plaintiff's current job performance and was not made at work to a WGCX employee. (Napier Dep. 5-6.) Napier only discussed his opinion of Plaintiff's appearance and her long career with a non-employee outside of working hours. (Napier Dep. 5-6.) Unlike Wright, it cannot be said that the people responsible for Plaintiff's termination thought that Plaintiff should not be employed because of her gender. See 187 F.3d at 1304.

Plaintiff has failed to provide evidence of blatantly discriminatory remarks with no other possible intent that could constitute direct evidence of discrimination. See Damon, 196 F.3d at 1359. While Napier's comment at the Fourth of July picnic was unprofessional, it is not clear that gender discrimination is the only possible intent. (Napier Dep. 6.) In Damon, the man that fired Damon then told Damon's

replacement that the company needed "aggressive young men" to be promoted, but the court did not view that as direct evidence since an inference of discrimination against Damon was still required. 196 F.3d at 1359. Similarly, Napier's comment could have been just "guy talk" with no impact on Plaintiff's career, especially since the comment was made at an event outside of work while inebriated. (Napier Dep. 6.) Napier's comments on "the heat at 11:00 in August" and Plaintiff's once-successful career could also suggest that Napier's description of Plaintiff was due to frustration with her subpar ratings and bovine stubbornness compared to Quint, with whom Plaintiff shares a gender. (Napier Dep. 6; Penningsworth Decl. Ex. B.) All of this is further complicated by Plaintiff's refusal to find further context for Napier's overheard remarks, which could have provided clarity to her. (Kile Dep. 4.)

Because Plaintiff has not provided evidence of unambiguous discriminatory comments by her bosses Napier and Penningsworth affecting her termination, Plaintiff has not met the 11th Circuit's rigorous standard for direct evidence and can only rely on indirect evidence. See Damon, 196 F.3d at 1359.

B. Plaintiff has not provided sufficient indirect evidence of discrimination because Plaintiff relies upon an invalid comparator.

If a plaintiff cannot establish their employment discrimination case through direct evidence, they may attempt to use indirect evidence via the McDonnell Douglas test. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973); see Damon, 196 F.3d at 1358. To pass this test, a plaintiff must first show that (1) they are in a protected class, (2) they were subjected to an adverse employment action,

(3) they were qualified for their job, and (4) their employer treated "similarly situated" employees of a different class more favorably. Lewis, 918 F.3d at 1220-21. WGCX accepts that Plaintiff's gender is a protected class and that her termination was an adverse employment action. § 2000e-2(a)(1). WGCX also acknowledges that holding a job for over a decade establishes qualification for said job and that Plaintiff was an anchor since 1995. (Compl. ¶ 11); see Damon, 196 F.3d at 1360 (explaining that if a plaintiff has held a position for a long time, then they are qualified for said position). However, Plaintiff has not satisfied the fourth prong of showing "similarly situated" employees of a different gender receiving favorable treatment, since her co-worker is not "similarly situated in all material respects." See Lewis, 918 F.3d at 1228.

To determine which employees are similarly situated, four kinds of similarities are sought: engaging in the same conduct or misconduct as plaintiff, being subject to the same employment policy, sharing the same supervisor, and similar employment or disciplinary history. Id. at 1227-28. This standard removes all nondiscriminatory reasons for an employer's action and allows for summary judgment for employers in cases where a plaintiff's comparators are too dissimilar to permit an inference of discrimination. Id. at 1228-29. Because Plaintiff relies on a comparator that is not similarly situated in all material respects, WGCX is entitled to summary judgment. See id. at 1229; Lathem v. Dep't of Child. & Youth Servs., 172 F.3d 786, 793 (11th Cir. 1999).

If employees of different classes are subjected to different policies due to different characteristics of each employee, then the employees are not sufficiently similarly situated to support a discrimination claim. Lewis, 918 F.3d at 1230-31. In Lewis, the plaintiff policewoman ("Lewis") brought a discrimination claim against her employer after her termination. Id. at 1219. Lewis had a permanent heart condition that prevented her from completing weapons training, so she was placed on paid leave until she completed certain paperwork, but she used up her leave before she did the paperwork. Id. at 1219, 1230. Her employer fired her under the Personnel Policy for an unapproved leave of absence. Id. at 1219. In her claim, Lewis alleged that two white policemen failed physical tests and were placed on administrative leave and given more opportunities to return to work. Id. One policeman failed a balance test, was given ninety days of leave to fix the relevant problem, and passed the test on a second attempt within ninety days. Id. The other policeman failed an agility test, was also given ninety days of leave to fix the relevant problem, and was eventually fired after failing to demonstrate his fitness to be a field policeman. Id. Both were placed on unpaid leave under the "Physical Fitness/Medical Examinations" policy, which did not exist during Lewis's tenure. Id. at 1230. The court found that the policemen were not similarly situated with Lewis and could not be used as comparators, since Lewis was placed on leave for a permanent condition and fired under the Personnel Policy while the policemen were placed on leave for theoretically fixable problems under a later different physical policy. Id.

If employees of different classes commit the same misconduct but receive different punishments, then they are similarly situated but receive different treatment and a *prima facie* case of discrimination is established. See Lathem, 172 F.3d at 793. In Lathem, a female juvenile intake officer ("Lathem") filed a discrimination claim against her employer ("DCYS") after being terminated for violation of DCYS rules against fraternization with clients and for refusing to cooperate with DCYS's investigation. Id. at 789-90. Lathem alleged that Larry Smith ("Smith"), Lathem's male superior, also violated anti-fraternization rules but was transferred rather than terminated. Id. at 790. The court found that Lathem and Smith were similarly situated because they committed similar infractions and that DCYS's failure to explain the discrepancy between their punishments meant that Lathem established a *prima facie* claim of discrimination. Id. at 793.

Plaintiff's indirect evidence is insufficient because her sole named male comparator, Wane, is not similarly situated in two respects: being subject to the same policy and engaging in the same misconduct as Plaintiff. (Compl. ¶ 16); see Lewis, 918 F.3d at 1227-28; Lathem, 172 F.3d at 793.

Plaintiff is not similarly situated with Wane because they were not subject to the same policy due to differing characteristics. (Napier Dep. 4); see Lewis, 918 F.3d at 1227-28. Napier gave each on-screen person recommendations for improvements that were tailored to each person's individual weaknesses. (Napier Dep. 4.) Just as Lewis and the white policemen were subjected to different policies for different problems, Plaintiff and Wane were given different recommendations for different

flaws. Lewis, 918 F.3d at 1230; (Napier Dep. 4.) Wane was not recommended plastic surgery because he had already had work done, unlike Plaintiff. (Wane Dep. 4; Kile Dep. 3.) Additionally, the directives were meant to improve anchor ratings following RCC's report, and Wane and Plaintiff performed better with different genders and age groups, so their directives differed. (Napier Dep. 4.) Because they were subjected to different directives for different reasons, Plaintiff and Wane are not similarly situated. (Napier Dep. 4); see Lewis, 918 F.3d at 1231.

Plaintiff is not similarly situated with Wane because they did not engage in the same misconduct. (Kile Dep. Ex. A); see Lathem, 172 F.3d at 793. Available evidence shows Plaintiff quit her makeover regimen but does not show similar behavior from Wane or other WGCX employees. (Napier Dep. 6.) Lathem and Smith both violated DCYS anti-fraternization rules but received different punishments, while only Plaintiff disobeyed Napier's directives. Lathem, 172 F.3d at 793; (Kile Dep. Ex. A.) Even when Plaintiff obeyed she resisted most of her advisers, laughed at the hair stylist, and only worked with the speech coach and personal trainer. (Napier Dep. 5.) Since Plaintiff quit her assigned directive while Wane fulfilled his, they did not engage in the same misconduct.

Because Plaintiff has not provided a similarly situated male comparator, she has provided insufficient indirect evidence to establish a *prima facie* case of discrimination and WGCX should receive summary judgment on this claim. See Lewis, 918 F.3d at 1229, 1231.

Applicant Details

First Name	**Tyler**
Last Name	**Sekunda**
Citizenship Status	**U. S. Citizen**
Email Address	**tjsek@utexas.edu**
Address	**Address** **Street** **210 E 32nd St Apt. A** **City** **Austin** **State/Territory** **Texas** **Zip** **78705** **Country** **United States**
Contact Phone Number	**6092739658**

Applicant Education

BA/BS From	**The College of New Jersey**
Date of BA/BS	**May 2019**
JD/LLB From	**The University of Texas School of Law** **http://www.law.utexas.edu**
Date of JD/LLB	**May 24, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Journal of Law and Technology** **American Journal of Criminal Law**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Roberts, Chris
wroberts@law.utexas.edu
Robinson, Chiquisha
CRobinson@pdsdc.org
Wimmer, Julie
julie.wimmer@law.utexas.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Tyler Sekunda

609-273-9658 | tjsek@utexas.edu

June 30, 2023

The Honorable Ignacio Torteya III
United States District Court
Southern District of Texas
Federal Building and United States Courthouse
600 East Harrison Street, Suite 203
Brownsville, TX 78520

Dear Judge Torteya,

I recently finished my second year at The University of Texas School of Law. I am writing to apply for a clerkship in your chambers for the 2024 term. I want to spend my career in the courtroom, and your years of experience presiding over a courtroom draw me to this clerkship.

My work experience before law school prepared me to be a member of a tight-knit, fast-paced work environment. Throughout college, I worked at a family-owned pizza restaurant run by Italian immigrants. As a delivery driver and then cook, I learned how to manage myself and my responsibilities amidst the intense nature of our work. Then, as a teacher, I honed my ability to operate independently as I took on the task of designing a brand-new 9th grade curriculum. In both of those roles, I was depended on to do my work without handholding, yet I still developed deep bonds with my coworkers and leaned on them as they leaned on me. I've brought those practical skills into my legal work as well. During my time with the Public Defender Service of D.C. (PDS) I learned how to conduct an administrative hearing on behalf of a client I had only met two days earlier. During my time as a Research Assistant and Teaching Quizmaster I prioritized, planned, and took initiative to meet deadlines months in the future. I hope to bring these attributes into your chambers and contribute to the work and to the community therein.

My application includes a resume, transcript, and writing sample. You will also receive letters of recommendation from Professor Julie Wimmer, Chiquisha Robinson, Esq. of PDS, and Professor Chris Roberts. Those recommenders may be reached as follows:

- Professor Julie Wimmer; (512) 232-1307; julie.wimmer@law.texas.edu
- Chiquisha Robinson; (617) 869-5812; crobinson@pdsdc.org
- Professor Chris Roberts; (512) 232-1033; wroberts@law.utexas.edu

In addition, the Law School's clerkship advisor, Kathleen Overly, is available to answer your questions. You may reach her at koverly@law.utexas.edu or 512-232-1316. Thank you for your time and consideration.

Respectfully,

Tyler Sekunda

Tyler Sekunda

609-273-9658 | tjsek@utexas.edu

EDUCATION

The University of Texas School of Law | Austin, Texas | J.D. expected May 2024
GPA: 3.71

- AMERICAN JOURNAL OF CRIMINAL LAW, Staff Editor, Fall 2022-Present
- THE JOURNAL OF LAW AND TECHNOLOGY, Articles Editor, Fall 2021-Present
- Lead Teaching Quizmaster (teaching assistant for the 1L writing program), 2022-23
- Research Assistant with the Prison and Jail Innovation Lab, 2022-2023
- Beck Center Writing Program, Outstanding Memo Award, Fall 2021
- Criminal Defense Clinic Student Practitioner, Spring 2023
    - Conducted a Suppression Hearing arguing 4th and 5th Amendment violations

The College of New Jersey | Ewing, New Jersey | Received May 2019
B.A. *magna cum laude* in English and Secondary Education with Minors in Philosophy and Law
GPA: 3.77

- Presented Senior Capstone — "Lucifer's Heroic Revolution in *Paradise Lost*"—at the 2019 English National Honor Society Convention in St. Louis

WORK EXPERIENCE

The Bronx Defenders | The Bronx, New York
Civil Action Practice, Law Clerk, Summer 2023

- Drafted a Reply filing in support of our Motion to Dismiss in an eviction proceeding
- Researching New York City and State Housing and Employment law

Public Defender Service for the District of Columbia | Washington, D.C.
Prisoner and Reentry Legal Services, Law Clerk, Summer 2022

- Represented clients in Disciplinary Hearings at the D.C. Jail
- Advocated on behalf of D.C. Jail residents in a meeting with the Director and Deputy Directors of the D.C. Dept. of Corrections

Bordentown Regional High School | Bordentown, New Jersey
Teacher, May 2019 – June 2020

- Taught Public Speaking, 9th grade English, and 12th grade English
- Developed the curriculum for a new ninth grade supplemental English class

LANGUAGES & INTERESTS

- Limited working Spanish proficiency
- Hot Yoga, crossword puzzles, and playing basketball

Prepared on June 20, 2023

June 30, 2023

The Honorable Ignacio Torteya, III
Federal Building and United States Courthouse
600 East Harrison Street, Room 203
Brownsville, TX 78520

Dear Judge Torteya:

It is my understanding that Tyler Sekunda is applying for a clerkship, and I write in support of Tyler and his application. During the spring 2023 semester, Tyler was a student in the Criminal Defense Clinic (CDC) at the University of Texas School of Law. I am the Clinic's director and served as Tyler's primary supervisor. He was a fantastic student whose intelligence, work ethic, and demeanor give me every reason to believe he will be a fantastic clerk.

When our semester began, Tyler was immediately thrown into the deep end. Each student's caseload begins with cases that carry over from the previous semester, and we often have some form of contested hearing with a setting that is a bit earlier in the semester than I would like. Last spring, this took the form of a fairly complicated suppression hearing. Tyler was one of the two students I selected to take on the task, and both the client and I would be grateful for this choice. Initially, I could see that Tyler was a bit nervous (and very reasonably so, given the details of the client's situation), but he and his partner dove in to produce first drafts quickly. His first draft was well-conceived and well-developed. But over the course of a few weeks, he strengthened the examination significantly by working through several revisions and multiple mooting sessions. He incorporated feedback quickly, both in his written drafts and in his execution during our mooting sessions. And while the hearing didn't go forward as scheduled, Tyler's efforts clearly exhibited a hallmark of excellent lawyering: he had channeled his trepidation into outstanding preparation and was more than ready to proceed as needed. Largely from the work for that hearing, he had already logged nearly 100 hours prior to the midpoint of the semester. (For context, our clinic requires 150 hours of work over the course of the semester, consistent with clinical guidelines.) In his other cases, regardless of the task, Tyler embraced preparation and committed himself to thinking deeply and working tirelessly until he knew that he was ready to execute for his clients.

Returning to the suppression hearing, Tyler used the extra time to great effect, continuing to improve his examination and arguments and taking every opportunity to moot and test his preparation. When we finally reached the hearing, his execution was outstanding. He had considered any number of angles and contingencies and had prepared questions and arguments accordingly. And because he had spent so much time learning the case and considering his strategy, when he was confronted with some variations in argument and testimony that we had not discussed, he immediately saw opportunities for additional questions and argument as needed. I am not sure that I have ever seen a student who was more fluid in the moment. If you speak with Tyler, I expect his intelligence and thoughtfulness will be apparent. I can attest to his talent as an advocate, but perhaps more importantly, his performance in the hearing went beyond any of these gifts – he had done the difficult work leading up to the hearing that allowed him to produce his best possible advocacy for the client.

His work in the hearing was also emblematic of Tyler's desire to take every opportunity to improve. This was a recurring theme throughout his work. One of Tyler's cases required analysis of the client's potential immigration consequences. His co-counsel in that case was someone whose primary focus in law school has been learning about the complicated landscape of immigration law. Many students (and perhaps lawyers) would have deferred to this student on this aspect of the representation. However, Tyler wanted to challenge himself to learn more about immigration consequences and decided that he would take the first crack at the research in this area. He quickly produced a well-researched and well-written memo. He vetted that memo with his colleague, who revised little if anything. The same was true when we discussed his analysis with an experienced immigration lawyer. In another instance, he volunteered to help me with a case despite having one of the more active caseloads among our group. He told me that he did this so that he could watch my approach to the client and case, as he thought that would be another way to learn more about the work he will eventually do. His approach to the work means that he will perform at high level from the start, and he will consistently get better.

In closing I'll simply add that if you speak with Tyler, you will undoubtedly meet someone who is affable and even-keeled. In my experience, his demeanor remains consistent, even as circumstances become more difficult. I know that judges need someone who will be a "good fit" to work in the close-knit environment of chambers, and Tyler is going to be a fantastic colleague, wherever he lands. Please feel free to contact me if you have additional questions.

Sincerely,

Chris Roberts, Director

Phone: 512.232.1033

Email: wroberts@law.utexas.edu

July 03, 2023

The Honorable Ignacio Torteya, III
Federal Building and United States Courthouse
600 East Harrison Street, Room 203
Brownsville, TX 78520

Dear Judge Torteya:

It is my pleasure to write this letter of recommendation on behalf of Tyler Sekunda for a clerkship in your chambers. Tyler was a law clerk in the Fall of 2022 with the Prisoner and Reentry Legal Services Program (PRLS) of the Public Defender Service for the District of Columbia (PDS). PRLS is an innovative program which provides direct legal services on post-conviction and reentry matters to indigent individuals with D.C. Code offenses. Our office tackles a wide variety of issues, including institutional disciplinary hearings, parole hearings, sentence computation, and criminal record sealing. Being selected as a PDS law clerk for any division is immensely competitive given PDS's reputation as the premier public defender office. We seek students who not only have exceptionally bright legal minds but will also zealously fight for our clients. For PRLS, the bar is even higher, as law clerks are trusted to directly represent incarcerated clients in disciplinary hearings. Accordingly, I handpick clerks who demonstrate a superior capacity to build client relationships.

Against this backdrop of high expectations, Tyler delivered exceptional, thoughtful, and thorough work. Tyler produced a wide array of excellent research and writing projects during his clerkship. Though their topics varied, the work products were all clear, thorough, and concise. One of Tyler's first assignments was to analyze the interaction between Federal and State/D.C. sentencing laws—an area of law not known for its clarity. Tyler also drafted a motion to seal a criminal record, relying on research he conducted into how unlawful entry applies to sidewalk benches. His research and writing skills were most pronounced in his preparation for a meeting he and I attended with the Director and Deputy Directors of the D.C. Department of Corrections. Tyler conducted research into federal law concerning prison Due Process, and he also compiled the Due Process violations our office was seeing in our Administrative Disciplinary Hearings. Tyler managed that project skillfully and created an excellent resource which we used during the meeting and which we also shared with the Director and Deputy Directors during the meeting.

Tyler's advocacy did not stop with the preparation, during that meeting with the Department of Corrections, Tyler contributed important points and advocated strongly and concisely for our clients. His advocacy extended beyond that meeting as well; throughout the summer, Tyler represented ten D.C. Jail residents in their disciplinary hearings. He argued zealously, skillfully, and in a manner displaying his professional maturity and ability to think on his feet. When those hearings did not have the outcome we desired, Tyler continued his advocacy in appellate format, drafting seven appeals for the Deputy Director to review. His appeals displayed the same legal writing skill as his projects mentioned above.

What stood out the most about Tyler's time here was his attention to detail. That shone through most when he responded to letters our office receives from incarcerated persons. Some people write for help with their case, some for attorney referrals, and some for legal research help. Tyler gave every letter the attention it deserved and tried to give his replies as much detail as possible. Tyler gave his letters as much energy as he gave to any hearing he conducted. Tyler's dedication to using the law as a vehicle for helping others was on full display during his time here.

Throughout his clerkship, Tyler consistently impressed our team with his dedication, dependability, and creativity in tackling projects. I am confident that Tyler will be an excellent law clerk in your chambers.

If you have any questions about this letter of recommendation or my observations of his work, please do not hesitate to reach out to me. I may be reached via telephone at 617-869-5812 or via email at crobinson@pdsdc.org.

Respectfully submitted,

Chiquisha Robinson, Esq.
Deputy Chief, Prisoner & Reentry Legal Services
The Public Defender Service for D.C.
Community Defender Division

July 03, 2023

The Honorable Ignacio Torteya, III
Federal Building and United States Courthouse
600 East Harrison Street, Room 203
Brownsville, TX 78520

Dear Judge Torteya:

I write to recommend Tyler Sekunda for a judicial clerkship in your chambers. I am a graduate of Harvard Law School, a former clerk for Senior U.S. District Judge George P. Kazen (Southern District of Texas-Laredo division), and a Lecturer at Texas Law, which is how I met Tyler.

Tyler was a top student in my Fall 2021 legal writing course; he won an award for writing one of the two best memos of my students that term. In fact, Tyler performed at the top of his section in all his courses that term.

Because he stood out among his peers in that class, I hired Tyler to serve as a teaching assistant ("Teaching Quizmaster" in Texas Law's parlance) for my legal research and writing courses for 1Ls this past year. In that role, he provided written feedback on the legal memos written by students, offering constructive comments on their research skills, understanding and use of caselaw, organization, citations, and writing skills—from basics to concision and precision. He also served as a would-be supervisor and would-be judge, hearing oral reports and oral arguments from students. As part of this role, he enrolled in an Advanced Legal Writing course open only to writing course teaching assistants, to learn advanced legal writing and editing techniques.

Tyler is engaged, reliable, and works well independently, and he thrives with independent research and writing tasks. As part of his job as my "lead" TA, in the fall of 2023 I relied on him to prepare example materials, edit or comment on prior student work, or research legal issues for me, and he always met my weekly deadlines with room to spare. In so doing, he exercised good judgment in either asking for further direction where needed or completing the task and flagging issues for my subsequent review.

And though he works well independently, he also collaborates effectively in teams. He is pleasant, collegial, and professional. As part of his work as my TA, he met weekly with me and his fellow TAs to review student needs and the upcoming week's plans. In those meetings and other collaborations with his peers, he listened well to other viewpoints, respectfully shared his own, and took the appropriate initiative on shared tasks.

Tyler is naturally curious and thoughtful, exhibiting both depth and breadth in his interests. He has been a leader in the public interest community at the law school. He is on the board of the Public Interest Law Student Association and has engaged in significant clinical and pro bono work. I know that he understands that a clerkship in your chambers would be a crucial learning opportunity for him as he prepares for his career, and I feel confident that he would work earnestly to exceed your expectations.

If I can provide any further information in support of Tyler's application, please contact me at julie.wimmer@law.utexas.edu or (214) 912-2593.

Sincerely,

Julie D. Wimmer
Lecturer
David J. Beck Center for Legal Research, Writing, and Appellate Advocacy
The University of Texas School of Law

Tyler Sekunda

609-273-9658 | tjsekunda@gmail.com

Writing Sample

This writing sample is excerpted from a memorandum written during my time at the Public Defender Service for the District of Columbia. I was tasked with providing a snapshot of specific issues related to the interactions among federal and state sentences. I shortened this sample from its original form after the completion of my internship. This sample has not been edited by anyone other than myself. I have permission from my supervisor to share this writing sample.

This memorandum will provide a snapshot of the complexities inherent in the overlap of Federal and State sentences. Particular attention will be given to: the repercussions of the decision in *Setser v. United States*, 132 S.Ct. 1463 (2012); and the use of federal sentencing guideline 5G1.3 in the District Court for the District of Columbia.

The most important consideration in this area of law is the concept of primary jurisdiction. The sovereign with primary jurisdiction over a defendant has priority in terms of prosecution, sentencing, and service of sentence. *Taylor v. Reno*, 164 F.3d 440, 444 n.1 (9th Cir. 1998). The first sovereign to establish physical custody of a defendant has primary jurisdiction until that primary jurisdiction is relinquished. *Wiseman v. Wachendorf*, 984 F.3d 649 (8th Cir. 2021). Primary jurisdiction may be relinquished any of four ways: releasing on bail; releasing on parole; dismissal of charges; sentence expiration. *Johnson v. Gill*, 888 F.3d 756 (9th Cir. 2018); *Elwell v. Fisher*, 716 F.3d 477 (8th Cir. 2013); *McKnight v. United States*, 27 F.Supp.3d 575 (D.N.J. 2014). Primary jurisdiction is not relinquished when a prisoner in state custody is brought before a federal court through a writ of habeas corpus ad prosequendum. *Wiseman v. Wachendorf*, 984 F.3d 649 (8th Cir. 2021); *Johnson v. Gill*, 888 F.3d 756 (9th Cir. 2018); *Taccetta v. Federal Bureau of Prisons*, 606 Fed.Appx. 661 (3rd Cir. 2015).

The BOP is responsible for federal sentence computation under authority delegated through the Attorney General. *United States v. Wilson*, 112 S.Ct. 1351 (1992); *United States v. Queen*, CR 17-58 (EGS), 2020 WL 2748495, at *4 (D.D.C. May 27, 2020).

Sentence Commencement

A federal sentence does not commence until the person is under the primary jurisdiction of the federal government. 18 U.S.C.A. § 3585 (West); *Wiseman v. Wachendorf*, 984 F.3d 649 (8th

Cir. 2021); *United States v. Johnson*, 932 F.3d 965 (6th Cir. 2019); *Pope v. Perdue*, 889 F.3d 410 (7th Cir. 2018). But when a federal sentence is imposed on a person in state custody, the federal sentence may commence if the BOP designates the state facility for service of the federal sentence. *Taylor v. Lariva*, 638 Fed.Appx. 539 (7th Cir. 2016) (mem. op.). The BOP's authority and discretion to designate state facilities for carrying out federal sentences comes from 18 U.S.C. § 3621(b) and its list of pertinent factors. 18 U.S.C.A. § 3621(b) (West). The designation may be made *nunc pro tunc*. *Lariva*, 638 Fed.Appx at 541 (citing *Barden v. Keohane*, 921 F.2d 476, 483 (3d Cir.1990)).

Concurrent Versus Consecutive Service of Federal Sentence with State Sentence

If a person is serving a state sentence under the primary jurisdiction of that state, and has a federal sentence waiting to commence, the BOP may—unless explicitly noted otherwise by the sentencing order—begin running the federal sentence through the designation authority of 18 U.S.C. § 3621(b). 18 U.S.C.A. § 3621(b) (West). However, the default for sentences imposed at different times is that they run consecutively. 18 U.S.C.A. §3584(a) (West). The BOP employs that default in sentence computation, but the District Court for the District of Columbia has expressly rejected that presumption in sentencing decisions made by judges. *U.S. v. Ayers*, 795 F.3d 168, 177 (D.C. Cir. 2015). The statute, the Court wrote, only addresses "how sentencing orders are to be interpreted." *Id.* at 173. Judges have the ultimate authority for these decisions, but if federal sentencing orders are unclear on the issue of running consecutively or concurrently, the BOP has "wide discretion" in designating state facilities for service of a federal sentence in order to make the sentences run concurrently. *Lariva*, 638 Fed.Appx at 541 (citing *Barden v. Keohane*, 921 F.2d 476, 483 (3d Cir.1990)).

Impact of *Setser*

Federal judges can order federal sentences to run consecutively or concurrently with a state sentence yet to be imposed. *Setser v. United States*, 132 S.Ct. 1463 (2012). Though 18 U.S.C. § 3584 does not explicitly grant this authority, the Supreme Court recognized this power "in light of the common-law background against which" that statute was enacted. *Id.* at 1468. The reader of this memo was particularly interested in the practical ramifications of the authority granted in *Setser*. Explaining the authority practically, the Court wrote:

> If a prisoner like Setser starts in state custody, serves his state sentence, and then moves to federal custody, it will always be the Federal Government—whether the district court or the Bureau of Prisons—that decides whether he will receive credit for the time served in state custody. And if he serves his federal sentence first, the State will decide whether to give him credit against his state sentences without being bound by what the district court or the Bureau said on the matter.

Id. at 1471. Because of the concept of primary jurisdiction, staying the execution of a sentence does not occur when judges order their sentence to run consecutive to an anticipated state sentence—the federal sentence *cannot* begin to run until the federal government has primary jurisdiction over the defendant. 18 U.S.C. 3585(a) (West). In situations where the *Setser* authority is used, the defendant is before the federal court through a writ of habeas corpus ad prosequendum; therefore, the state court does not lose primary jurisdiction. The defendant is on loan through the writ, and after federal sentencing the defendant will be returned to the state system for service of that sentence (or trial or sentencing). After service of the state sentence, the BOP will look to the federal sentencing order, and if that judge ordered concurrence, the BOP can make a *nunc pro tunc* designation of the state facility for service effectively making the sentence concurrent. If the judge ordered the sentence to run consecutive to an expected state sentence, then the BOP will take custody of the defendant and begin running the sentence.

Importantly, the 7th Circuit has stated in dicta that "A sentencing court's failure to recognize its discretion under *Setser* would constitute an error." *United States v. Olsem*, 37 F.4th 1354, 1356 (7th Cir. 2022) (discretion under *Setser* to order federal sentences to run consecutively to or concurrently to anticipated state sentences).

Additionally, the discretion granted in *Setser* is limited to anticipated state sentences, not anticipated federal sentences. *See* 132 S.Ct. at 1471 n. 4 ("It could be argued that § 3584(a) impliedly prohibits such an order. . ."); *see also U.S. v. Almonte-Reyes*, 814 F.3d 24 (1st Cir. 2016); *United States v. Lynn*, 912 F.3d 212 (4th Cir. 2019); *United States v. Williams*, 5 F.4th 973 (9th Cir. 2021).

After the decision in *Setser*, sentencing guideline 5G1.3 was amended to address this discretion. *Lynn,* 912 F.3d at 222 (J. Floyd, concurring in part and dissenting in part). U.S.S.G. § 5G1.3(c) recommends that the sentence for the offense under consideration be ordered to run concurrently with any anticipate state offense that is "relevant conduct" as defined in U.S.S.G. § 1B1.3. U.S.S.G. § 5G1.3(c).

Impact of Sentencing Guideline 5G1.3

Section 5G1.3 permits a court to make a downward departure on a federal sentence when a defendant has spent time in detention that will not be credited toward the federal sentence. U.S.S.G. § 5G1.3. A downward departure is permissible when the term of imprisonment already being served resulted from an offense that is "relevant conduct" to the instant offense being sentenced presently. *Id.* Relevant conduct for 5G1.3 purposes is defined in U.S.S.G. § 1B1.3 with broad language:

> **(a)(1)**(A) all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and
>
> (B) in the case of a jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all acts and omissions of others that were--
>
> (i) within the scope of the jointly undertaken criminal activity,
>
> (ii) in furtherance of that criminal activity, and
>
> (iii) reasonably foreseeable in connection with that criminal activity;
>
> --that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense;
>
> **(2)** solely with respect to offenses of a character for which § 3D1.2(d) would require grouping of multiple counts, all acts and omissions described in subdivisions (1)(A) and (1)(B) above that were part of the same course of conduct or common scheme or plan as the offense of conviction;
>
> **(3)** all harm that resulted from the acts and omissions specified in subsections (a)(1) and (a)(2) above, and all harm that was the object of such acts and omissions;

U.S.S.G § 1B1.3. The broad language gives sentencing judges much discretion. Section 5G1.3 concerns undischarged sentences, but a downward departure is also available for discharged sentences through U.S.S.G. § 5K2.23 when "5G1.3 . . . would have provided an adjustment had that completed term of imprisonment been undischarged at the time of sentencing." § 5K2.23.

Generally, downward departures are still strongly discretionary, but the U.S. Circuit for the District of Columbia mandates that sentencing courts always consider relevant guidelines in § 5G1.3. *United States v. Brown*, 892 F.3d 385 (D.D.C. 2018) involved a sentencing court failing to acknowledge 5G1.3's recommendation for concurrency: this was found to be plain error on the part of the sentencing district court. *Brown*, 892 F.3d at 399. The offender's federal sentence arose from conspiracy to possess and distribute PCP, while the offense deemed relevant conduct

was for shooting a man during a marijuana sale. *Brown*, 892 F.3d at 397. There was no downward departure in this case—excerpts provided in the decision indicate that the sentencing judge only deemed the shooting relevant conduct to employ a use-of-violence sentence enhancement. *Id.* at 398 (quoting the district court saying that the offender "should know going in, that there is not much, if any, likelihood that there will be a sentence from this Court within the guideline range."). It is unclear if these two offenses would be considered relevant conduct to each other if instead a court sought to make a downward departure. Ultimately, the Court of Appeals reaffirmed that the guidelines are merely advisory, but the Court also held that it was reversible plain error to refuse to acknowledge the guideline recommendation for concurrence with a sentence arising from relevant conduct to the instant offense. *Id.* at 399.

Two charges were found to be not relevant conduct when they occurred four months apart and both involved a gun. *United States v. Freeman*, 788 Fed. Appx. 7, 8 (D.C. Cir. 2019) (mem. op.). In *Freeman*, the defendant was convicted of robbery with a dangerous weapon in Maryland and of unlawful firearm possession by a felon in the district court. *Id.* at 7. The defendant argued it was an abuse of discretion for the sentencing court to order his sentences to run consecutively rather than concurrently. *Id.* at 8. The Court of Appeals, though, did not consider the conduct of the Maryland robbery to be relevant conduct to the firearm possession, even though they occurred four months apart and both involved a firearm. *Id.* The Court cited language from U.S.S.G. § 1B1.3, focusing particularly on the (a)(1)(B) language of whether the conduct was "in furtherance" of the instant offense and whether it was "reasonably foreseeable in connection" to the instant offense. *Id.* The Court of Appeals held that running the sentences consecutively was not an abuse of discretion. *Id.*

Different types of monetary fraud have been held as non-relevant conduct. *United States v. Campbell*, 268 Fed.Appx. 3 (D.C. Cir. 2008). In *Campbell*, the defendant's Superior Court charge involved an attempt to cash a stolen, forged check; the federal charge included a conspiracy to file false income tax returns. *Id.* at 5. The defendant argued that the charges were the "'same general type' of offense and the 'same societal harm' of stealing money." *Id.* The Court disagreed and also gave substantial deference to the District Court's findings as the factfinder, noting that the question of relevant conduct is "inherently fact intensive." *Id.* (quoting *United States v. Jackson*, 161 F.3d 24, 28 (D.C.Cir.1998)). Specifically, the question of whether two instances of monetary fraud constituted the "same course of conduct" is fact intensive, and the Court gave deference to the District Court's finding that the two were not relevant conduct. *Id.*

The loss of potential state confinement credits is a relevant consideration for sentences using § 5G1.3. *United States v. Miller*, 953 F.3d 804, 814 (D.C. Cir. 2020) (mem. op.). In *Miller*, the court relied on § 5G1.3(d)—which states that the ultimate goal is to achieve a reasonable punishment for the instant offense—to say that it would have been unreasonable for a sentencing court to disregard the loss of one year's worth of credits at the state institution. *Id.* The defendant raised an ineffective assistance of counsel claim on many grounds, including that his attorney did not inform the sentencing judge of the lost potential time credit defendant was unable to earn while in federal detention on a federal writ. *Id.* The defendant was previously incarcerated in a Maryland state facility where time credits can be earned for things such as a work detail. *Id.* "The district court would not have been permitted to disregard" that loss of potential credit because the court must "know what the other sentence is and consider whether the federal sentence, when combined with the state sentence, is necessary to achieve a reasonable

punishment." *Id.* Thus, the Court of Appeals remanded for resentencing because the attorney failed to inform the sentencing judge about that loss of potential state credit. *Id.*

Overall, like much of sentencing, § 5G1.3 is highly discretionary. But, the U.S. Court of Appeals for D.C. has demonstrated that sentencing judges should, on the record, be aware of and acknowledge 5G1.3's guidelines and recommendations is inherently fact-intensive. *See Brown*, 892 F.3d at 397; *see also Miller*, 953 F.3d at 814.

Applicant Details

First Name	**Tessa**
Middle Initial	**E**
Last Name	**Slagle**
Citizenship Status	**U. S. Citizen**
Email Address	**tessaeslagle@utexas.edu**
Address	**Address** **Street** **710 E Dean Keeton Unit 202** **City** **Austin** **State/Territory** **Texas** **Zip** **78705** **Country** **United States**
Contact Phone Number	**9707558067**

Applicant Education

BA/BS From	**University of Texas-Austin**
Date of BA/BS	**May 2019**
JD/LLB From	**The University of Texas School of Law** **http://www.law.utexas.edu**
Date of JD/LLB	**May 11, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Texas Review of Law & Politics**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Barnes, Aaron
aaron.barnes@oag.texas.gov
Avraham, Ronen
ravraham@law.utexas.edu
5122321357
Saltmarsh, Sara
sara.saltmarsh@austin.utexas.edu
512-476-1588

References

Adjunct Professor Sara Saltmarsh, The University of Texas School of Law
sara.saltmarsh@austin.utexas.edu, 512-476-1588

Professor Ronen Avraham, The University of Texas School of Law
ravraham@law.utexas.edu

Aaron Barnes, Office of the Attorney General of Texas
aaron.barnes@oag.texas.gov, 512-475-2947

This applicant has certified that all data entered in this profile and any application documents are true and correct.

TESSA SLAGLE

710 East Dean Keeton, Unit 202, Austin, Texas, 78705 | 970-755-8067 | tessaslagle@hotmail.com

July 25, 2023

The Honorable Ignacio Torteya, III
United States District Court
Southern District of Texas
600 E. Harrison Street, Suite 203
Brownsville, Texas 78520

Dear Judge Torteya:

I am a rising 3L at the University of Texas School of Law writing to apply for a clerkship position in your chambers beginning after I graduate in May 2024. In 2016, I first moved to Texas and over time, I came to love this state wholeheartedly, embracing its friendly people, rich cultural diversity, and abundant outdoor opportunities. Texas truly captured my heart and became a place I'm proud to call home. Given our shared background in working for municipal governments, I am particularly enthusiastic about an opportunity to clerk in your chambers. Additionally, I greatly value learning from someone who successfully managed a law firm.

Legal research has been a passion of mine since starting law school and having the opportunity to delve into it in my recent internships and jobs have been incredibly fulfilling. I thrive on the intellectual challenges of digging deep into case law, statutes, and regulations to find answers and support legal arguments. Helping prepare cases and shape strategies has been both rewarding and exciting. I am eager to pursue a judicial clerkship to gain invaluable insight into the judicial process and contribute to the administration of justice. Last summer, I wrote holdings for state judges and enjoyed applying my legal research in written work products.

My application includes a resume, law school transcript, undergraduate transcript, writing sample, and the Federal Judicial Branch Application for Employment form. Additionally, below are three professional references who may be reached as follows:

Adjunct Professor Sara Saltmarsh, The University of Texas School of Law
sara.saltmarsh@austin.utexas.edu, 512-476-1588

Professor Ronen Avraham, The University of Texas School of Law
ravraham@law.utexas.edu, 512-232-1357

Aaron Barnes, Office of the Attorney General of Texas
aaron.barnes@oag.texas.gov, 512-475-2947

In addition, the Law School's clerkship advisor, Kathleen Overly, is available to answer your questions. You may reach her at koverly@law.utexas.edu or 512-232-1316. If I may provide any additional information, please contact me. Thank you for your time and consideration.

Respectfully,

Tessa Slagle

Tessa Slagle

Enclosures

TESSA SLAGLE

710 East Dean Keeton, Unit 202, Austin, Texas, 78705 | 970-755-8067 | tessaslagle@hotmail.com

EDUCATION

The University of Texas School of Law, Austin Texas
J.D. expected May 2024
Cumulative GPA 2.98; 2L GPA 3.35

- TEXAS REVIEW OF LAW & POLITICS, Staff Editor, January 2022–Present
- Robert W. Calvert American Inn of Court, Pupil Member, June 2023–Present

The University of Texas, Austin, Texas
B.A. High Honors in Government received May 2019
GPA 3.88

- Gamma Beta Phi and The National Society of Collegiate Scholars
- Student Government Supreme Court, Associate Justice, May 2018–May 2019
- University of Texas Triathlon Club, Sponsorship Chair, October 2017–May 2019
- Campus-Wide Election Board, Member, October 2017–May 2018

EXPERIENCE

City of Corpus Christi, City Attorney's Office, Corpus Christi, Texas
Legal Intern, May 2023–Present
Perform research on Texas statutes and case law. Observe plea bargain negotiations and municipal court proceedings. Attend depositions, mediations, and Downtown Reinvestment Zone meetings.

Office of the Attorney General of Texas, Austin, Texas
Legal Intern, January 2023–April 2023
Drafted written notices for depositions and performed research on Texas Senate Bill 1 litigation.

Colorado Judicial Branch, Colorado Springs, Colorado
Judicial Intern, May 2022–July 2022
Performed research for district court judges presiding over juvenile delinquency cases. Assisted in drafting a fifteen-page holding for a dependency and neglect case. Acted as bailiff during criminal jury trials. Updated a Benchbook concerning the Children's Code of the Colorado Revised Statutes.

Colorado Judicial Branch, Greeley, Colorado
Court Judicial Assistant, Division 8 County Court, May 2021–August 2021
Clerked arraignments and bond hearings for magistrates and judges. Drafted protection orders, fingerprint orders, and sentencing orders issued by judicial officers. Entered guilty pleas, findings, deferred sentences, and dismissals into the Judicial Paper on Demand case management system.
Court Judicial Assistant, Clerk's Office, March 2021–May 2021
Accepted or rejected pleadings, motions, and other filings filed by parties or non-parties. Entered default judgments against defendants who failed to appear for infraction hearings. Processed new county bond hearings each morning. Maintained an orderly courtroom as bailiff.

Colorado State Senator Jerry Sonnenberg, Denver, Colorado
Legislative Aide, September 2019–January 2021
Coordinated the Senator's schedule. Researched legislation and summarized bills before the first reading of each bill. Corresponded with constituents, lobbyists, and other professionals via phone, email, and letters.

Olsen Legal Group, Cheyenne, Wyoming
Legal Intern, May 2019–August 2019
Drafted deeds and documents for revocable trusts. Filed exhibits, briefs, appeals, and other legal documents with the court. Conducted research on Wyoming's death penalty and private probation.

LANGUAGES AND INTERESTS

Intermediate proficiency in Brazilian Portuguese. Enjoy swimming, running, country swing dancing, and hiking.

Updated on July 17, 2023

July 29, 2023

The Honorable Ignacio Torteya, III
Federal Building and United States Courthouse
600 East Harrison Street, Room 203
Brownsville, TX 78520

Dear Judge Torteya:

I write to recommend Tessa Slagle for a judicial clerkship with your court. Having supervised Tessa throughout the spring of 2023 while she interned with the Office of the Attorney General, I can state unequivocally that her diligence, enthusiasm, and work ethic make her an excellent candidate for any junior level legal position you are seeking to fill.

As an intern, Tessa stood out as being particularly conscientious and dedicated. This was evident in her excellent work product, which was always thoroughly researched and well-reasoned. For example, Tessa significantly contributed to our litigation efforts by analyzing complex issues of election law. Tessa also has a particular talent for organization, leading to high levels of efficiency.

In her short time at OAG, Tessa became a valued member of our team. She sought out interactions and advice from seasoned attorneys and was eager to apply what she learned. Tessa thrived when working with others that possess a similar level of dedication, making her a good fit for the high-stakes, high-stress environment of the Special Litigation Division.

Tessa was also eager to take on new challenges, ranging from the extraordinary to the mundane. She assisted in preparing for and sat in on client calls with government representatives, meet-and-confers with opposing counsel, and oral argument preparations. With the same enthusiasm, she also meticulously reviewed documents, legislative hearing transcripts, and administrative guidance materials. Through it all, she maintained the same positive attitude and can-do mindset.

Given her skills and interests, I advised Tessa to seek a judicial clerkship and thus am very pleased to see her pursuing this opportunity. Tessa has the potential to succeed in a wide array of legal positions. I believe observing court proceedings and learning from those that administer the judiciary would serve as an excellent foundation for whatever she chooses to pursue next. In the meantime, Tessa's skills, knowledge, and work ethic will allow her to contribute to the Court's important work at a level unlikely to be matched by her peers.

Please do not hesitate to contact me if I can provide any additional information that might prove helpful. Thank you.

Respectfully

/s/ J. Aaron Barnes
J. Aaron Barnes
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
(512) 475-2947
aaron.barnes@oag.texas.gov

July 29, 2023

The Honorable Ignacio Torteya, III
Federal Building and United States Courthouse
600 East Harrison Street, Room 203
Brownsville, TX 78520

Dear Judge Torteya:

I am writing to recommend Tessa Slagle for a clerkship position. Having had the pleasure of teaching her in an insurance law course at the University of Texas School of Law, I can confidently attest to her exceptional abilities, unwavering dedication, and profound passion for the law.

Throughout the course, Tessa consistently demonstrated her intellectual curiosity, engaging with the material at an exemplary level. Her active participation in class discussions was truly remarkable, as she not only contributed insightful perspectives but also effectively synthesized complex legal concepts to facilitate a deeper understanding for her peers. Miss Slagle's ability to explain and analyze cases with clarity and precision was consistently evident.

In addition to her exceptional classroom performance, Tessa produced an outstanding research paper on livestock insurance, showcasing her ability to investigate complex subjects and produce cogent and persuasive arguments. Her work was marked by meticulous research, keen attention to detail, and an understanding of the underlying legal principles.

Furthermore, Miss Slagle is an excellent communicator, adept at distilling complex legal concepts into accessible language. Her ability to express herself with clarity and precision, both verbally and in writing, will undoubtedly serve her well in a federal magistrate clerkship role. Tessa has a natural talent for crafting persuasive arguments, and her writing skills make her an asset in any legal setting.

Overall, I have no doubt that Tessa's exceptional academic record, unwavering commitment, and impressive analytical abilities make her an ideal candidate for a federal magistrate clerkship. She possesses all the qualities necessary to excel in this role and contribute meaningfully to the legal profession.

Thank you for considering Tessa Slagle's application. I have no doubt that she will make a valuable contribution to your courtroom, and I eagerly await her future success.

Sincerely,

Ronen Avraham
Senior Lecturer
The University of Texas School of Law

July 29, 2023

The Honorable Ignacio Torteya, III
Federal Building and United States Courthouse
600 East Harrison Street, Room 203
Brownsville, TX 78520

Dear Judge Torteya:

I am writing to recommend Tessa Slagle as an applicant for a judicial clerkship.

Ms. Slagle was a student in the Alternative Dispute Resolution course which I taught during the Fall 2022 semester at the University of Texas School of Law in Austin, Texas. The course was experiential, and students practiced negotiation, mediation, and arbitration skills in role play exercises throughout the semester. Students also submitted weekly journals with negotiation plans and self-analysis, and wrote a final paper.

Ms. Slagle was an excellent student and received an A in the course. Ms. Slagle was cooperative and collaborative in team assignments, working well with her various assigned partners. She was attentive and insightful in observing classmates' role play exercises, as well, and implemented techniques she found successful. She is eager and open to learning and is a very good team player. She was an active participant in class discussions.

Ms. Slagle's writing assignments were well written, and her final paper contained thorough research and analysis, presented with clarity and organization. Much of her law-related work experience has involved writing and research.

Ms. Slagle's work experience also reflects a commitment to learning court procedures and practical skills, and she even worked several times as a bailiff in her jobs with the Colorado Judicial Branch.

Thank you for considering Ms. Slagle's application. Her professionalism, enthusiasm, courtesy, and diligence would make her an asset to any workplace, and I heartily recommend her for a judicial clerkship.

Very truly yours,

Sara E. Saltmarsh,
Adjunct Professor,
University of Texas School of Law

TESSA SLAGLE

710 East Dean Keeton, Unit 202, Austin, Texas, 78705 | 970-755-8067 | tessaslagle@hotmail.com

WRITING SAMPLE

This writing sample is a draft order I prepared as a summer intern at the Colorado Judicial Branch, Fourth Judicial District. The assignment was to draft a holding denying relief of judgment in a dependency and neglect case. I performed all the research, and this work is entirely my own. I followed the Colorado Court of Appeals' policy, adopted August 4, 2017, when citing electronic records. All names and birthdays have been redacted or omitted for confidentiality purposes. This draft was adopted as an order of the court with minor edits. I am submitting the writing sample with the permission of Colorado District Judge Robin Chittum.

DISTRICT COURT EL PASO COUNTY, COLORADO 270 S. Tejon Colorado Springs, CO 80901	
THE PEOPLE OF THE STATE OF COLORADO: In the Interest of: D.L. [D.O.B. [redacted]] J.T. [D.O.B. [redacted]] V.B. [D.O.B. [redacted]] Children EL PASO COUNTY DEPARTMENT OF HUMAN SERVICES, Petitioner, And Concerning: [redacted] Respondent	**COURT USE ONLY** Case Number: [redacted] Division: 16 Courtroom: S404
ORDER DENYING RESPONDENT'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO C.R.C.P. 60(b)(5)	

Respondent requests relief from the Order for Termination of the Parent-Child Legal Relationship re: Respondent and [redacted] filed on April 5, 2022, by this Court because Respondent is no longer in custody at the Colorado Department of Corrections. Respondent requests relief from judgment pursuant to Colorado Rules of Civil Procedure 60(b)(5).

Rule 60(b) of the Colorado Rules of Civil Procedure (C.R.C.P.) permits a party to seek relief from judgment as follows:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: . . . (5) any other reason justifying relief from the operation of the judgment.

The Colorado Supreme Court concluded that Rule 60 only provides relief in the interests of justice in extraordinary circumstances. *Cavanaugh v. State, Dep't of Soc. Servs.*, 644 P.2d 1, 5 (Colo. 1982). The Colorado Supreme Court held that C.R.C.P. 60(b), like its counterpart in the

Federal Rules of Civil Procedure (F.R.C.P.), "attempts to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice should be done." *Canton Oil Corp. v. Dist. Ct. In & For Second Jud. Dist.*, 731 P.2d 687, 694 (Colo. 1987) (quoting 11 C. Wright & A. Miller, *Federal Practice and Procedure* § 2851, at 140 (1973)). Several cases demonstrate when extreme circumstances will justify relief from judgment. This Order addresses five such cases that support this Court's denial of Respondent's request for relief from judgment.

First, a party may be relieved from a judgment when the government has offered no evidence and the only basis for action was a complaint containing allegations. *Klapprott v. United States*, 335 U.S. 601, 610 (1949). In *Klapprott*, the United States Attorney filed a complaint to cancel Klapprott's citizenship. *Id*. at 604. Klapprott did not have enough money to hire an attorney, so he drafted an answer to the complaint and wrote a letter to the American Civil Liberties Union (ACLU) asking the organization to represent him. *Id*. Klapprott was then arrested under federal indictment for conspiracy to violate the Selective Service Act. *Id*. Klapprott's letter to the ACLU was taken from him by FBI agents eight days before the deadline to respond to his cancellation of citizenship charge. *Id*. at 605. Unfortunately, the agents never mailed the letter. *Id*.

While Klapprott was in jail, a lawyer was appointed to defend Klapprott in the selective service case. *Id*. The lawyer also promised to help Klapprott in the citizen cancellation proceedings, but the lawyer neglected to do so. *Id*. Later, Klapprott was transferred to the District of Columbia to be tried on a sedition charge. *Id*. at 606. The United States Supreme Court reversed the selective service conspiracy case, and the sedition case was dismissed; however, the case surrounding his citizenship remained. *Id*. In an action brought by the Citizens Protective League, a petition was filed on Klapprott's behalf to vacate the default judgment of citizenship cancellation and grant him a trial on the merits. *Id.* at 607. A district judge dismissed Klapprott's

motion and held that Klapprott was guilty of laches for not arranging a defense of the cancellation of citizenship charge while he was in prison. *Id.*

The Supreme Court reversed the district court's holding. *Id*. at 616. The Court held that a conviction would have required a proof of guilt beyond a reasonable doubt. *Id.* at 610. Klapprott was continuously in prison for six and one-half years. *Id.* at 607. For four and one-half years, Klapprott was held in prison on charges that the government was unable to sustain. *Id.* The petitioner's allegations created an extraordinary situation that cannot fairly or logically be classified as mere 'neglect' on his part. *Id*. at 613. The basis of Klapprott's petition was that he was incarcerated, weakened from illness, and without a lawyer in the denaturalization proceedings or funds to hire one. *Id*. at 614. He was distressed and fully occupied in efforts to protect himself against the gravest criminal charges. *Id.* Furthermore, Klapprott was no more able to defend himself in the court where the Attorney General filed the motion to cancel his citizenship than he would have been had he never received notice of the charges. *Id*. The Supreme Court held that the language of the 'other reason' clause, in F.R.C.P. 60(b)(5), allowed courts to vacate judgments whenever such action is appropriate to accomplish justice. *Id*. at 614–15.

Second, free, calculated, and deliberate choices are not excusable reasons for a court to grant a relief of a judgment. *Ackermann v. United States*, 340 U.S. 193, 198 (1950). In 1942, complaints were filed against Ackermann, his wife Frieda, and Keilbar (Ackermann's brother-in-law) to cancel their naturalizations on grounds of fraud. *Id*. at 195. After the trials of all three cases, separate judgments were entered, canceling, and setting aside the orders admitting them citizenship. *Id.*

Keilbar appealed, and by stipulation of the United States Attorney, Mr. Keilbar's case was reversed, and the complaint against him was dismissed. *Id*. However, Ackermann did not appeal. *Id*. Ackermann claimed his attorney advised him that he and his wife could not appeal on

affidavits of inability to pay costs until they had "appropriated said home to the payment of such costs to the full extent of the proceeds of a sale thereof." *Id*. at 196. Ackermann also claimed that they relied on Kelley, the Assistant Commissioner for Alien Control, Immigration and Naturalization Department, who advised them to "hang on to their home." *Id.* The Supreme Court held that Ackermann could not be relieved of his choice not to appeal because hindsight indicated that his choice not to appeal was probably wrong, considering the outcome of Mr. Keilbar's case. *Id*. at 198. The Court held that there must be an end to litigation, and free, calculated, deliberate choices are not to be relieved from judgment. *Id*. at 198.

Third, contributory fault, where one has failed to use care to protect his interests, is one ground for refusal to grant relief. *Carrethers v. St. Louis-San Francisco Ry. Co.*, 264 F. Supp. 171, 173 (W.D. Okla. 1967). Carrethers was allegedly injured while employed by Saint Louis-San Francisco Railway Company. *Id.* at 172. Carrethers filed a complaint, and the railway company filed a motion to dismiss; however, Carrethers never responded. *Id.* Carrethers called the court, and a staff member told him that his case had been dismissed because of Carrethers's failure to respond to the motion. *Id*. The staff member advised him that he could move to vacate the dismissal if he desired. *Id.* Carrethers did not give this information to his attorney—whom he later discharged. *Id.* The attorney acknowledged receiving a copy of the court's dismissal order and took no action because Carrethers instructed the attorney to do nothing because he wanted to dismiss the case to improve his relationship with Saint Louis-San Francisco Railway Company. *Id*. at 173. Carrethers denied making this instruction, stating that he did not discuss the order of dismissal with his then-attorney when he was notified of the dismissal order. *Id*.

The district court held that Carrethers voluntarily abandoned his suit after the case was dismissed. *Id*. at 174. Carrethers was found liable of contributory negligence and inexcusable neglect for failing to look after his interest upon notification of the dismissal. *Id*. at 174. The court stated that granting relief is subject to the general rules of equity, and one ground of refusal

is contributory fault when one has failed to use care to protect his interests. *Id*. at 173. Additionally, the court said that the plaintiff's inexcusable neglect, which also amounts to contributory fault, would not provide the necessary extraordinary circumstances to warrant the extraordinary relief afforded by Rule 60(b)(6). *Id*.

Fourth, "[g]ross conduct" of jurors constitutes an "other reason" justifying relief under clause (5) of C.R.C.P. 60(b). *Canton Oil Corp*, 731 P.2d at 689. In *Canton Oil*, Canton Oil Corp. (Canton) sought relief pursuant to the Colorado Securities Act of 1981 and asserted several common law claims. *Id.* at 688. A verdict was delivered in favor of Canton against defendants Nordic Petroleums, Inc., Oene "Owen" Miedema, Seahawk Oil Corporation, and Gary MacLellan. *Id*. at 689. The defendants moved for relief from the judgment under C.R.C.P. 60(b), alleging that the jury's verdict was a product of passion and prejudice; that some of the jurors had insinuated a grossly improper "Jewish issue." *Id*. For example, one of the jurors sent religious material to defendant Miedema. *Id*. The Colorado Supreme Court found that the "gross conduct" of the jurors constituted an "other reason" under clause (5) of Rule 60(b) of the C.R.C.P. *Id*. The court held that C.R.C.P. 60(b), like its counterpart in the F.R.C.P., attempts to resolve the diverging goals of concluding litigation and promoting justice. *Id.* at 694 (quoting 11 C. Wright & A. Miller, *Federal Practice and Procedure* § 2851, at 140 (1973)).

Fifth, Rule 60 is not a substitute for appeal but is instead meant to provide relief in the interests of justice in extraordinary circumstances. *Cavanaugh*, 644 P.2d at 5. Cavanaugh was the owner and operator of The Tot College, a childcare center, which was granted a provisional six-month license to operate. *Id*. at 2. Before the provisional license expired, a caseworker for the Department of Social Services visited The Tot Center and created a report describing regulation violations found to exist at the childcare facility. *Id.* The Department sent the report to Cavanaugh and requested a written response detailing how Cavanaugh planned to correct the violations and comply with the regulations. *Id*. Cavanaugh never responded to the request and

refused to allow employees of the Department of Social Services to enter and inspect The Tot College multiple times. *Id.* at 2–3. Cavanaugh was warned several times that her license to operate The Tot College would not be renewed if she continued to refuse an inspection. *Id.* at 3.

At an administrative hearing, the judicial officer found that Cavanaugh's refusal to allow inspections was sufficient to rescind the provisional license and deny the application for license renewal. *Id*. In January 1978, a trial was held, and the court affirmed the agency's action by entering a final order on June 27, 1978. *Id*. Cavanaugh's attorney prepared a motion for stay of the judgment pending appeal and a motion requesting an extension of time to file a new trial motion, but the motions were never filed with the court. *Id*.

Cavanaugh obtained new counsel and filed a motion for relief from judgment relating to the June 27, 1978, order's validity. *Id*. at 4. The district court declined to grant relief, and the Colorado Supreme Court affirmed. *Id*. The court argued that Cavanaugh failed to file a motion for a new trial within fifteen days. *Id*. Instead, Cavanaugh filed a motion with the district court in the latter part of May 1979—almost one year after the fifteen-day deadline. *Id*. Cavanaugh argued that the failure to file the motion for a new trial resulted from inadvertence and clerical error on the part of either Cavanaugh's former counsel or the court clerk. *Id*. However, Cavanaugh offered no evidence to support her claim. *Id*. The court held that Rule 60's expansive language of "any other reason" has been narrowly interpreted to avoid undercutting the favored rule of finality of judgments. *Id.* at 5. Furthermore, the court concluded that Rule 60 is not a substitute for appeal and is only meant to provide relief in the interests of justice in extraordinary circumstances. *Id.*

FACTS

On June 7, 2019, children J.T., D.L., and V.B. were removed from the custody of Respondent by the El Paso County Department of Human Services (EPCDHS) after EPCDHS

received a referral on June 4, 2019. Written Status Report, 2, June 24, 2020. It was reported that Respondent, the biological mother of the three children, was never home and using methamphetamine. *Id.* At the time of the removal, J.T. was two years and five months old, D.L. was three years and four months old, and V.B. was nine years and two months old. *Id.* at 2–3. The EPCDHS had temporary legal custody of all three children, and they were placed with a foster-adopt family. *Id.* at 2.

On November 20, 2019, the children were adjudicated dependent and neglected by Respondent. *See* Order, Dec. 13, 2019. On January 8, 2020, a treatment plan was adopted for Respondent. *Id.* at 3. The purpose of the treatment plan was to provide the family with services and to assist in the mitigation of the case. TR 1/26/2022, p 29:8–12. The EPCDHS established a treatment plan with the hope that Respondent complete the plan and be reunited with her children. *Id.* at p 29:13–16.

The EPCDHS filed a *Motion for Termination of the Parent-Child Legal Relationship* on August 11, 2020, and again on January 4, 2021. The Department did not proceed with either of those motions. A third *Motion for Termination of the Parent-Child Legal Relationship* was filed on November 12, 2021, and testimony was heard on January 26, 2022, and February 7, 2022.

The expert witness, a caseworker for the EPCDHS, was assigned to the case in August 2021 and testified on January 26 and February 7, 2022. *See* TR 1/26/2022; *see also* TR 2/7/2022. During testimony, the caseworker explained Respondent's EPCDHS treatment plan, describing the treatment plan's objectives and the action steps of each objective. *See* TR 1/26/2022. Additionally, the EPCDHS provided Respondent multiple cell phones to remain in contact with her providers and a bus pass for transportation to her services. *Id.* at p 34:1–4. The EPCDHS treatment plan for Respondent included six objectives. *Id.* at p 30:11–16.

The first objective was "to eliminate substance abuse so that it no longer interferes with the ability to safely and effectively parent." *Id.* at p 30:23–24. In order to comply, Respondent was

expected to complete a substance abuse evaluation and follow through with recommendations. *Id.* at p 31:2–3. To be successful, "Respondent's treatment providers will be able to confirm her sobriety and will be able to confirm that she is fully compliant with treatment recommendations." *Id.* at p 31:13–15. The EPCDHS initially made a referral to Insight Services in September 2019 for a substance abuse evaluation. *Id.* at p 31:19–23. Respondent did not complete the evaluation, so a second referral was sent to Recovery Unlimited in October 2020. *Id.* at p 32:15–16. The second referral was closed unsuccessfully on March 22, 2021. *Id.* at p 33:1-14.

Objective two of the EPCDHS treatment plan was to ensure that Respondent and her children were not victims or witnesses of domestic violence. *Id.* at p 36:15–18. Action steps of this objective were for Respondent to follow all court orders with respect to communication with her children, complete a domestic violence victim's assessment, and follow through with recommendations of the evaluation. *Id.* at p 36:20–23. This objective was important because Respondent had a history of relationships that included domestic violence, and her children were exposed to those interactions. *Id.*at p 37:5–7. The EPCDHS submitted a referral to Insight Services for a domestic violence evaluation in September 2019, which Respondent did not complete. *Id.* at p 37:13–20. Another referral was made for Recovery Unlimited in October 2020. *Id.* at p 38:1–2. Respondent did not complete the evaluation at Recovery Unlimited, and the Social Worker with EPCDHS testified that Respondent did not substantially comply with objective two of her treatment plan. *Id.* at p 38:1–10.

Respondent's third objective of her treatment plan was to demonstrate parental protective capacity so that the children can reside in a safe and emotionally healthy environment. *Id.* at p 39:1–3. The action steps for this objective were for Respondent to have no further arrests, comply with the terms and regulations related to her criminal case, and attend a parenting education class. *Id.* at p 39:5–8. The EPCDHS referred Respondent to Life Skills for parenting

classes at Four Feathers, New Horizons, and the Family Center from 2019 to 2021, but the referrals were closed due to lack of engagement. *Id.* at pp 39–40.

Additionally, the EPCDHS social worker testified that Respondent had eight new charges filed against her between the time of the case's initiation and Respondent's incarceration with the Department of Corrections. *Id.* at p 41:5–10. The social worker testified that Respondent did not substantially comply with the third objective of the treatment plan. *Id.* at p 44:19–21.

The fourth objective of the EPCDHS treatment plan was that Respondent be able to meet the children's housing, food, clothing, and medical needs. *Id.* at p 44:22–25. The steps required for Respondent to meet this objective were for Respondent to obtain a legal source of income sufficient to provide for the needs of the children and find safe and appropriate housing for the children. *Id.* at p 45:1–4. Additionally, she needed to provide the children with adequate food, clothing, and basic necessities and ensure that the children's medical and dental needs were met at all times. *Id.* at p 45:4–6. The EPCDHS referred Respondent to Life Skills at Four Feathers, New Horizons, and the Family Center. *Id.* at p 45:15–22. A Life Skills worker typically works with parents to establish housing, assists with résumé building and housing applications, and helps to identify employment opportunities for the parent. *Id.* at p 45:15–18. Respondent did not complete any of the referrals, and the social worker testified that Respondent did not substantially comply with objective four of the EPCDHS treatment plan. *Id.* at p 46:19–21.

Objective five of the EPCDHS treatment plan was for Respondent to maintain regular contact with her caseworker, guardian ad litem, and attend all court appearances. *Id.* at pp 47–48. The action steps for Respondent to achieve this objective were to participate in all staffing, family engagement meetings and court hearings either in person, by telephone, and when appropriate through counsel. *Id.* at p 48:3–6. No formal services were put into place for objective five, but EPCDHS scheduled staffing and family engagement meetings. *Id.* at p 48:13–19. The

social worker testified that Respondent substantially complied with objective five to the best of her ability. *Id.* at p 49:19–21.

The sixth objective of the EPCDHS treatment plan was for Respondent to have consistent visitation with her children. *Id.* at p 49:23–25. The action steps for Respondent to achieve this objective were for Respondent to attend all visitations arranged by the caseworker and follow all rules related to such visitation. *Id.* at p 50:1–3. The EPCDHS sent a referral to Four Feathers in June 2019, and Respondent only attended one scheduled visitation between August 2019 and November 2019. *Id.* at p 50:15–23. Four Feathers terminated the referral, and EPCDHS submitted a new referral to Kids Crossing on November 20, 2019, to help get Respondent back on track with objective six. *Id.* at p 51:12–16. Respondent never signed up for a scheduled visit with Kids Crossing. *Id.* at p 51:17–19. In October 2020, EPCDHS made a referral to the Family Center for therapeutic visits. *Id.* at p 52:2–5.

The therapeutic referral was brought about when a hearing was held in July 2020 regarding visitation. *Id.* at p 52:6–9. At the hearing, it was requested that Respondent write a letter to her children before engaging in the therapeutic visits because she had not been in contact with them for an extended period. *Id.* at p 52:9–12. Respondent wrote a letter to her children and EPCDHS sent a referral in October 2020 for therapeutic visitations. *Id.* at p 52:13–19. The therapeutic visits ended because Respondent was incarcerated in January 2021. *Id.* at p 53:20–25. The social worker testified that Respondent did not comply with objective six to the best of Respondent's ability before incarceration. *Id.* at p 54:15–17. The social worker testified that during Respondent's incarceration, her ability to comply with the objective was not necessarily in Respondent's control. *Id.* at p 54:22–23.

Due to various complications, Respondent only had one supervised visitation with J.T. and D.L. via video while at La Vista Correctional Facility. *Id.* at pp 56–57. Child V.B. required therapeutic visits, but the Department of Corrections had no provider to mediate the visits

virtually. *Id.* at pp 59–60. Respondent asked this Court to grant her more time to comply with this objective because she believed she was robbed of visitations with her children while she was incarcerated. TR 2/7/2022, p 68:18–23. She argues that if the visitations with her children had occurred, she would have been much further along in the process of reunifying with her children and being able to parent her children. *Id.* at p 68:13–17. Respondent would also be required to complete an evaluation and treatment for domestic violence to complete her treatment plan created by EPCDHS. *Id.* at p 60:16–21. Respondent did not know how long her evaluation and treatment would take; therefore, she did not know how much time she was asking the Court to give her. *Id.* at pp 60–61.

Respondent testified on February 7, 2022, that she was approved for Community Corrections but did not know when a bed would become available to her in order to transfer to Community Corrections. *Id.* at p 33:14–25. Respondent's placement at Community Corrections in Colorado Springs is not a condition of her parole, but rather, it is part of her Department of Corrections sentence. *Id.* at pp 56–57. Additionally, she did not know when she would be released to non-resident status at Community Corrections. *Id.* at p 66:19–24. Respondent testified that the earliest she could be granted non-resident status at the Community Corrections is four months. *Id.* at p 70:1–8. With a resident status at Community Corrections, Respondent would only be allowed to have visitations with her children. *Id.* at pp 62–63.

Respondent was at Community Corrections but broke the rules and ended up at the La Vista Correctional Facility in July 2021. *Id.* at p 81:10–14. Before Respondent's incarceration at La Vista, she was at Washington County Justice Center. *Id.* at p 81:10–13. Once Respondent went to La Vista, she began taking classes with the Therapeutic Community except when quarantined. *Id.* at p 34:1–16. Respondent attended approximately eight courses with the Therapeutic Community, including Commitment to Change (substance abuse), Critical Thinking, and Healthy Relationships. *Id.* at pp 35–43. Respondent also attended Narcotics Anonymous and

Alcoholics Anonymous each Sunday night. *Id.* at p 37:2–5. She began classes to prepare her for the General Educational Development exam and was working on obtaining a Serve Safe Certificate by working in the kitchen at La Vista. *Id.* at pp 43–44.

On February 7, 2022, the social worker testified that Respondent's class Commitment to Change in the Therapeutic Community at La Vista addresses substance abuse, but Respondent had not completed the program. *Id.* at p 26:12–18. Therefore, the EPCDHS's concerns about substance abuse have not been mitigated. *Id.* at p 15:17–22. Additionally, the services Respondent received at La Vista did not include a domestic violence assessment or treatment. *Id.* at p 16:4–8. Furthermore, in February 2022, the social worker testified that Respondent "is not likely to be a fit parent in a reasonable amount of time." *Id.* at p 20:14–17. If Respondent had satisfied the requirements of the treatment plan, she would have been considered a fit parent, according to the social worker. *Id.* at p 20:18–20.

When ruling at the Termination Hearing on February 7, 2022, this Court acknowledged the amazing progress that Respondent made while in the Department of Corrections at La Vista. *Id.* at p 74:18–19. However, this Court also acknowledges that the Therapeutic Community at La Vista is an inpatient program. *Id.* at p 75:11. When Respondent goes to Community Corrections, she will be surrounded by others who also have a history of substance abuse. *Id.* at p 77:22–25. The Court also noted that some people in Community Corrections will be actively using drugs. *Id.* at p 80:13–15. Additionally, this Court recognizes that Respondent was in the Department of Corrections because of her own decisions. *Id.* at p 77:20–25. Respondent has made changes in the last six months but did almost nothing for two years to complete the EPCDHS treatment plan. *Id.* at p 79:20–22.

This Court recognized that the interest of justice is the welfare of the three children, not Respondent's desires. *Id.* at p 81:22–23. The youngest child has doubled in age from the opening of the case. *Id.* at pp 81–82. The social worker testified that the longer a child is in a placement,